



*Jewish*  
**FRONTIER**

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**Constitution of Israel**

**Observations on the Constitution**

★ *Leo Kohn*

**The Israeli Covenant**

★ *Carl J. Friedrich*

**To Young Commanders**

★ *David Ben-Gurion*

**The "Internationalization" of Jerusalem**

★ *Eliezer Liebenstein*

January, 1949

Thirty-Five Cent



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# Jewish FRONTIER

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VOL. XVI      JANUARY, 1949      No. 1 (166)

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Published monthly by the Jewish Frontier Association, 45 East 17th Street, New York 3, N. Y., and admitted as second class mail, December 1, 1934, at the Post Office, New York, N. Y., under the act of March 3, 1879. Single copies 35 cents. Subscriptions \$4.00. Canada and Foreign, \$4.50. Telephone: New York Editorial and Business Office: ALgonquin 4-8754. Los Angeles Office: 929 North Kenmore Avenue, Telephone: OL 2367.



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# Constitution of Israel

## Proposed Text

### Preamble

WE, THE PEOPLE OF ISRAEL, humbly giving thanks to Almighty God for having delivered us from the burden of exile and brought us back to our ancient land;

*Recalling* the tenacious endurance of the generations of the Exile and their heroic sacrifices for the survival of our People and the preservation of its spiritual heritage;

*Gratefully* remembering the faithful remnant who maintained the continuity of Jewish settlement in Palestine throughout the centuries, and the inspired efforts of the pioneers of the national revival;

*Resolved* to rebuild our Commonwealth in accordance with the ideals of peace and righteousness of the Prophets of Israel, to welcome home every Jew who seeks entry, and to promote the security and well-being of all who dwell within our gates.

HAVE ADOPTED THE FOLLOWING CONSTITUTION:

### I. General Provisions

ARTICLE 1. The name of the State is ISRAEL.

ARTICLE 2. The State of Israel is a sovereign, independent, democratic republic.

ARTICLE 3. The State of Israel is designed to be the National Home of the Jewish People and shall admit every Jew who desires to settle within its territory subject to such regulative provisions as may from time to time be enacted by the Chamber of Deputies.

ARTICLE 4. (1) All persons within the jurisdiction of the State of Israel shall be entitled in equal measure to the protection of the law. No discrimination of any kind shall be made by the State between the inhabitants of the State on the grounds of race, religion, language, or sex.

(2) All citizens of the State shall enjoy equal civic and political rights. No citizen shall be at a disadvantage as a candidate for public office or employment or in the matter of promotion, on account of his race, religion, language or sex.

(3) No land, buildings or other property may be expropriated except for public purposes. In all cases of expropriation full compensation, as prescribed by law, shall be paid.

ARTICLE 5. The official language of the State of Israel is Hebrew. Adequate facilities shall be given to Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the courts and before the executive and administrative authorities.

ARTICLE 6. (1) The following persons shall

be citizens of Israel and shall enjoy the rights and privileges and be subject to the obligations of such citizenship:

(a) All Jews who were resident in the area of the State at the time of the enactment of this Constitution.

(b) All Jews over the age of 18 years resident in that part of Palestine which is not included in the State of Israel who, within one year, opt for citizenship of Israel. The exercise of this right of option shall include the wife and children under 18 years of age of the person so opting.

(c) All residents of Israel other than Jews who were citizens of Palestine at the time of the termination of the Mandate, provided that any such person being over the age of 18 may, within one year, elect not to accept the citizenship of Israel. The exercise of this right of option includes the wife and children under 18 years of age of the persons so opting.

(2) The conditions governing the future acquisition and termination of citizenship in the State of Israel shall be determined by a Nationality Law.

ARTICLE 7. The flag of the State of Israel is a white banner with two horizontal blue stripes and the Shield of David in the centre.

ARTICLE 8. All natural resources within the jurisdiction of the State of Israel shall belong to the State subject to any rights therein vested in any person or body, and shall be controlled and administered by the Government of Israel in accordance with such regulations and provisions as shall from time to time be approved by legislation.

ARTICLE 9. The State shall enact legislation to ensure the proper conservation and economic utilization of the soil and water for the benefit of the people.

ARTICLE 10. The Antiquities in Israel, being a precious heritage of the past, shall be considered as a trust to be conserved by the State for future generations, and the State shall enact legislation to this end.

ARTICLE 11. The State of Israel shall seek to settle all international disputes of whatever nature or origin in which it may be involved by pacific means only. The generally recognized rules of international law shall form part of the municipal law of Israel.

### II. Fundamental Rights

ARTICLE 12. The State shall ensure the sanctity of human life and uphold the dignity of



man. There shall be no penalty of death, nor shall anyone be subjected to torture, flogging or humiliating punishment. The application of moral pressure or physical violence in the course of police interrogations is prohibited; evidence obtained by such methods shall not be admissible in Court.

ARTICLE 13. (1) The liberty of the person is inviolable. No one shall be detained except pursuant to an order or judgment of a Court of Law, or when apprehended in flagrante delicto, or for the purpose of bringing him before a Court on a charge of having committed a crime.

(2) Preventive detention by executive order shall be unlawful except when authorized by specific legislation in time of war or national emergency and subject to continuous parliamentary control.

(3) Any person arrested shall be informed in writing within twenty-four hours by what authority and on what grounds he is being detained, and shall be brought up for trial not later than two days from the date of his arrest. Upon complaint being lodged by or on behalf of any person to the High Court or any Judge thereof, that any such person is being unlawfully detained, the High Court or the Judge to whom such complaint is made shall require the officer in whose custody such person is detained, to produce him without delay and certify in writing the grounds of his detention. If satisfied that the detention is not in accordance with the law, the Judge shall order the immediate release of the detainee.

(4) No person under arrest shall be held incommunicado.

(5) No person shall be deprived of his liberty on account of a debt or other contractual obligation except for fraud.

(6) No one shall be tried save by due process of law. Extraordinary courts shall not be established. No person other than members of the Armed Forces of the State on active service, shall, at any time, be subjected to the jurisdiction of military tribunals.

(7) No one shall be convicted of any infringement of the law which did not constitute an offense when it was committed, nor shall any amendment of the law increasing the penalty for any offense or altering the rules of evidence to the detriment of the accused have retroactive effect.

(8) Anyone wrongfully arrested, convicted or punished shall have an enforceable claim for compensation against the State.

ARTICLE 14. The dwelling of every person is inviolable and shall not be entered or searched except in accordance with the law and in the manner therein prescribed. Private correspondence

as well as telegraphic and telephonic communications shall not be intercepted. Any temporary suspension of these guarantees in time of war or national emergency shall require specific legislative authorization and shall be subject to parliamentary control.

ARTICLE 15. (1) Freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, shall be insured to all.

(2) Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired. The liberty of access, visit and transit to Holy Places shall be guaranteed, in conformity with existing rights, to all without distinction, subject to the requirements of national security, public order and decorum.

(3) No taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from taxation on the date of the establishment of the State. No change in the incidence of such taxation shall be made which would either discriminate between the owners or occupiers of Holy Places, religious buildings or sites, or would place such owners or occupiers in a position less favourable in relation to the general incidence of taxation than existed prior to the establishment of the State.

(4) The Sabbath and the Jewish Holy Days shall be days of rest and spiritual elevation and shall be recognized as such in the laws of the country. The Holy Days of other religious denominations shall equally be recognised as legal days of rest for the members of such denominations.

ARTICLE 16. Freedom of speech and the free expression of opinion in writing or in any other form, are guaranteed. This constitutional guarantee shall not extend to utterances or publications which are libellous, slanderous or obscene, or which are designed to stir up racial or religious hatred, or to incite to violence or crime, or which advocate the suppression of human rights, or of the democratic system of government, or which reveal secrets of national defence. The institution of a preventive censorship shall be unlawful save in time of war or national emergency and shall require specific legislative authorisation and be subject to continuous parliamentary control and review.

ARTICLE 17. All citizens of the State of Israel shall have the right to assemble peaceably without arms and to form associations, subject to such regulative provisions as may be enacted from time to time by the Chamber of Deputies. Such enactments shall contain no discrimination on grounds of race, religion, language or political belief.

This constitutional guarantee shall not extend to assemblies or associations aiming at the suppression of human rights or of the democratic form of government.

ARTICLE 18. Any officer of the State of Israel who, contrary to the provisions of this Constitution, knowingly violates the rights and liberties of any person shall be liable to proceedings under the civil and criminal law.

ARTICLE 19. Every citizen of the State of Israel has the right, either individually or in association with others to petition the President, the Government, the Chamber of Deputies, or any other public authority for the redress of grievances or of the enactment of legislation.

ARTICLE 20. No one may be extradited to any foreign country where he is liable to be deprived of such fundamental personal and political rights as are guaranteed by this Constitution. The Government of Israel may in its absolute discretion refuse to deliver up any of its subjects to a foreign government for prosecution or punishment.

ARTICLE 21. The economic order of the State of Israel shall be based on the principles of social justice. Every citizen shall have an equitable share in the national income and a right to social security. The State shall encourage and aid every form of cooperative effort.

ARTICLE 22. Every one has the right to work. The State of Israel shall endeavor to ensure to all its citizens without distinction a decent standard of living and a fair and equal opportunity of earning a livelihood. Legislation shall be enacted making provision for reasonable wages, working hours and conditions of work and for the provision of state insurance against the risks of accident, sickness, disablement, unemployment, old age and other causes of undeserved want. Special protective measures shall be enacted for the benefit of working mothers and children, and of widows and orphans.

ARTICLE 23. The right of workers to form trade union associations, to enter into collective bargaining contracts and to strike in defense of their economic rights and interests is guaranteed by the Constitution. Any provision embodied in a contract of employment which involves renunciation or diminution of these rights shall be null and void.

ARTICLE 24. Care for the health of the population is a primary duty of the State. Legislation shall be enacted providing for the establishment of a national health service, protection of motherhood and child life, the promotion of public and personal hygiene, and the grant of state aid towards the construction of hygienic workers' dwellings.

ARTICLE 25. (1) The State shall provide

adequate facilities for primary and secondary education to be given to Jews and Arabs in their own language and cultural traditions.

(2) The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the State may impose, shall not be denied or impaired.

(3) Foreign educational establishments shall be allowed to continue their activity on the basis of their existing rights.

### III. The Legislature

ARTICLE 26. The legislative power in the State of Israel shall be vested in the Chamber of Deputies.

ARTICLE 27. All citizens of the State who have reached the age of twenty-one and are not subject to any legal disability or incapacity under the electoral law shall be entitled to vote in the elections to the Chamber.

ARTICLE 28. All citizens of the State who have reached the age of twenty-five and are not subject to any legal disability or incapacity under the electoral law, shall be eligible to the Chamber. Judges, civil servants, members of the Armed Forces of the State of Israel serving with the colours, and persons who are also citizens of a foreign state shall not be eligible.

ARTICLE 29. The Chamber of Deputies shall be elected by equal, direct and universal suffrage and by secret ballot on the basis of proportional representation. The mode of election shall be determined by an electoral law. The country shall be divided into a number of electoral districts, each 10,000 of the population approximately to be represented by one deputy. The electoral districts shall be revised once in three years, having regard to intervening changes in the numbers and distribution of the population. Vacancies caused by the death, resignation, or disqualification of any deputy shall be filled in accordance with the provisions of the electoral law.

ARTICLE 30. Elections shall be held within two months from the expiration of the term or the dissolution of the preceding Chamber. They shall be held on the same date throughout the country.

ARTICLE 31. The Chamber shall meet within one month of its election. It shall hold two sessions every year, beginning in the first week of Cheshvan and Iyar, respectively. The sessions shall be convened by the Chairman on the day fixed by the Chamber upon its adjournment. At the request of one-third of the deputies, an extraordinary session shall be called.

ARTICLE 32. On taking their seats, deputies shall make the following solemn declaration: "I pledge myself to be faithful to the State of Israel and to uphold its Constitution and its laws."

ARTICLE 33. The Chamber shall be elected for a period of four years, but it may extend its term in case of war or emergency, but for no more than one additional term.

ARTICLE 34. The President of the Republic may dissolve the Chamber of Deputies prior to the expiration of its term if the Executive Council in office has resigned and no alternative Executive Council can be formed commanding the support of a stable majority in the Chamber.

ARTICLE 35. No legal action shall be taken against any deputy in respect of any statements made or vote taken in the Chamber or in respect of any opinions expressed by him outside the Chamber in his official capacity. No deputy may be required, even after having ceased to be a deputy, to give evidence in any court of law in regard to matters confided to him in that capacity. This provision shall not apply to any investigation conducted by a committee of enquiry appointed by the Chamber.

ARTICLE 36. No criminal proceedings may be taken against any deputy except with the consent of the Chamber. No deputy may be arrested except if apprehended in flagrante delicto. If any deputy is so arrested, the chairman shall be immediately informed and shall bring the matter to the notice of the Chamber. Unless the Chamber within a fortnight approves of the detention and authorizes the institution of legal proceedings against the deputy, he shall be released.

ARTICLE 37. Deputies shall receive a remuneration to be fixed by the Chamber.

ARTICLE 38. Official reports of proceedings in the Chamber and its Committees, as well as true reports of such proceedings wherever published, shall be privileged.

ARTICLE 39. The Chamber shall adopt Standing Orders for regulating its procedure, maintaining internal discipline and protecting its members from any molestation, interference or attempt at corruption. It shall elect a Chairman and Vice Chairman and fix their powers and remuneration.

ARTICLE 40. The proceedings of the Chamber shall be held in public. Upon a motion supported by two-thirds of the deputies present, the public may be excluded.

ARTICLE 41. Save as otherwise prescribed in this Constitution or in the Standing Orders, decisions shall be by a majority of those present. In case of any equality of votes the presiding officer shall exercise a casting vote.

ARTICLE 42. The initiative in introducing legislation shall rest with the Executive Council. Deputies may propose legislative measures, but such proposals shall be referred to a Select Committee of the Chamber. They shall be introduced by the Executive Council if recommended by a majority of the Select Committee and in the form recommended by that Committee.

ARTICLE 43. All revenues of the State, from whatever source arising, shall form one Consolidated Revenue Fund and shall be appropriated by the Chamber of Deputies for the purposes of the State in the manner and subject to the charges and liabilities imposed by this Constitution.

ARTICLE 44. The Chamber shall consider the estimates of income and expenditure for the current financial year submitted to it by the Executive Council, and shall enact the Finance Act prior to the end of the financial year. No resolution for the appropriation of funds or for the increase of any grant or charge may be moved except by a member of the Executive Council.

ARTICLE 45. After a Bill has been passed by the Chamber, two copies of it shall be transmitted by the Chairman to the President of the Republic for his signature. One copy shall be deposited in the Record Office of the Chamber and the other shall be transmitted to the Registrar of the High Court to be enrolled for record in his office. It shall come into force upon its publication in the Official Gazette.

ARTICLE 46. The recruiting and maintenance of the Armed Forces shall be subject to the control of the Chamber of Deputies.

ARTICLE 47. Treaties and other agreements with foreign countries shall not be binding upon the State unless approved by the Chamber of Deputies. By such approval these treaties and agreements shall become part of the municipal law of Israel. All such treaties and agreements shall be published in the Official Gazette.

#### IV. The Executive Power

ARTICLE 48. The executive power in the State of Israel shall be vested in the President of the Republic and in the Executive Council.

##### (1) THE PRESIDENT OF THE REPUBLIC.

ARTICLE 49. Any citizen of Israel, who is eligible to the Chamber of Deputies and has reached the age of 35, may be elected to the office of President.

ARTICLE 50. The President of the Republic shall be elected by the Chamber of Deputies by secret ballot. If, in two successive ballots, no candidate receives an absolute majority of votes, the candidate for whom, in the third ballot, a relative majority of votes is cast, shall be deemed to have been elected.



ARTICLE 51. The term of office of the President shall be five years. He may be re-elected on the expiry of his term or at any subsequent election, but only for one additional term of office.

ARTICLE 52. The election of the President shall take place not later than one month prior to the expiration of the term of the President in office. If the latter dies, resigns, is removed from office or becomes permanently incapacitated, such incapacity being established by a decision of the Supreme Court, the election of a new President shall take place within one month therefrom.

ARTICLE 53. If the office of the President becomes vacant as a result of the death, resignation, removal, or permanent incapacity of the holder, the Chairman of the Chamber of Deputies shall exercise the functions of the President until the election of a new President.

ARTICLE 54. The President, upon entering his office, shall make the following declaration in the presence of members of the Executive Council, the Chamber of Deputies and the Judges of the Supreme Court and the High Court: "I solemnly promise that I will maintain the Constitution and the laws of Israel, that I will dedicate myself to the service and welfare of the People of Israel and that I will act justly and rightly to all citizens of Israel."

ARTICLE 55. Every official act of the President shall be countersigned by the Prime Minister or a member of the Executive Council who shall thereby assume responsibility for it.

ARTICLE 56. The President shall, after consultation with the leaders of the parliamentary parties, appoint the Prime Minister and upon his advice, the other members of the Executive Council. The President shall appoint the ambassadors and ministers of the State of Israel. The President shall appoint the Commander-in-Chief of the Armed Forces of Israel and issue commissions to the officers of these Forces.

ARTICLE 57. The President shall receive the diplomatic envoys accredited to the State of Israel and shall issue exequaturs to foreign consuls.

ARTICLE 58. The President shall promulgate the laws enacted by the Chamber within ten days from the date of such enactment. If the law was enacted as an urgent measure it shall be promulgated within three days.

ARTICLE 59. The President shall exercise the prerogative of mercy.

ARTICLE 60. The President shall, upon the advice of the Executive Council and with the assent of the Chamber of Deputies, conclude treaties with foreign states.

ARTICLE 61. The President shall be removed from office on impeachment by two-thirds of the Chamber of Deputies and on conviction by the

Supreme Court of high treason, bribery or culpable violation of the Constitution.

## (2) THE EXECUTIVE COUNCIL.

ARTICLE 62. The Executive Council shall consist of the Prime Minister, the heads of the Departments of State and such Ministers without Portfolio as may from time to time be appointed. The total number of Ministers shall not exceed fifteen. All Ministers shall be members of the Chamber of Deputies and shall be appointed in the manner prescribed in Article 56.

ARTICLE 63. The Prime Minister shall preside over the meetings of the Executive Council. He shall be responsible for the coordination of activities of the Executive Council and for the execution by the Departments of State of the policies adopted by the Executive Council. He shall keep the President of the Republic informed on all major questions of domestic and foreign policy.

ARTICLE 64. The Executive Council shall be collectively responsible to the Chamber of Deputies. It shall resign if it ceases to retain the support of a majority in the Chamber of Deputies, but shall continue in office until its successors have been appointed. The resignation of the Prime Minister shall entail that of the Executive Council as a whole. Individual Ministers may resign from office by placing their resignation in the hands of the Prime Minister for submission to the President of the Republic.

ARTICLE 65. No minister may be a member of the Board of Directors of any Joint Stock or Limited Liability Company carrying on business for profit.

ARTICLE 66. The organization of the Departments of State, the designation of Ministers and their remuneration shall be regulated by law.

ARTICLE 67. The organization of and admission to the Civil Service shall be regulated by law. After the enactment of this Constitution, all appointments to the Civil Service shall be by examination to be conducted by a Civil Service Commission. In exceptional cases the Civil Service Commission may authorize the appointment of senior officers without examination.

ARTICLE 68. The Executive Council and any of its members shall have power to make orders and regulations within the framework of existing laws. Such orders and regulations shall be tabled in the Chamber of Deputies and shall become inoperative if a motion to that effect is adopted by the Chamber within two weeks therefrom.

## (3) COMPTROLLER AND AUDITOR GENERAL.

ARTICLE 69. There shall be a Comptroller and Auditor General to control, on behalf of the



State, all payments and to audit all accounts of monies administered by or under the authority of the Chamber of Deputies. He shall not be a member of the Chamber of Deputies nor hold any other office or position of emolument. The manner of his appointment and the length and conditions of his tenure of office shall be fixed by law.

### *V. The Judicial Power*

ARTICLE 70. The judicial power shall be vested in and exercised by the Courts of Law established under this Constitution. They shall comprise:

- (a) Magistrates' Courts;
- (b) District Courts;
- (c) A High Court with original and appellate jurisdiction in civil and criminal matters, and with exclusive original jurisdiction in all questions relating to the validity of any law having regard to the terms of the Constitution;
- (d) A court of final appeal to be called the Supreme Court;
- (e) Religious courts of the Jewish, Moslem and Christian communities exercising jurisdiction in matters of personal status and of religious foundations and endowments.

ARTICLE 71. The organization and jurisdiction of the courts, the remuneration, pensions and age of retirement of the judges, and all matters of procedure shall be regulated by law.

ARTICLE 72. All judges, other than the members of the Religious Courts, shall be appointed by the President of the Republic on the advice of the Minister of Justice who, in tendering such advice, shall be guided by the recommendations of a Selection Board consisting of a member of the Supreme Court, a High Court judge, two senior officers of the Department of Justice, three deputies chosen by the Chamber and three representatives of the Bar Association. The Selection Board shall be reconstituted annually. The judges of the Religious Courts shall be appointed by the President of the Republic acting on the advice of the Minister for Religious Affairs who, in tendering such advice, shall be guided by the recommendations of the Supreme Religious Council of the community concerned.

ARTICLE 73. No judge of the Civil Courts shall be removed from office except for stated misbehaviour or incapacity upon a resolution supported by two-thirds of the members of the Chamber of Deputies. No judge of the Religious Courts shall be removed from office except for stated misbehaviour or incapacity upon a motion of the Supreme Religious Council of the community concerned and upon a resolution sup-

ported by two-thirds of the members of the Chamber of Deputies. The removal shall be effected by an order of the President of the Republic.

ARTICLE 74. Where any action of personal status involves persons of different religious communities, the President of the Supreme Court shall decide which court shall exercise jurisdiction. In deciding such issue, he shall invite the assistance of assessors from the Religious Courts of the communities concerned. Whenever the question arises as to whether or not a case is one of personal status within the exclusive jurisdiction of a religious court, the matter shall be referred to a special tribunal, the constitution of which shall be prescribed by law.

### *VI. Amendment of the Constitution*

ARTICLE 75. The Chamber of Deputies shall have power to amend the Constitution, but every such amendment shall require the assent of two-thirds of the total membership of the Chamber and shall not come into force unless passed by that majority in two successive sessions of the Chamber, and unless not less than six months have elapsed between the two successive enactments.

### *VII. Constitution and Legislation*

ARTICLE 76. No law shall be enacted which is in any respect repugnant to any of the provisions of this Constitution. If the Courts pronounce any law or any provision thereof to be repugnant to the Constitution, such law or provision shall, to the extent of such repugnancy, be henceforth absolutely void and inoperative.

### *VIII. The Law*

ARTICLE 77. The laws in force in the State of Israel at the time of the enactment of this Constitution shall continue in force to the extent to which they are not inconsistent with the terms of this Constitution until the same or any of them shall have been repealed or amended by the Chamber of Deputies or under its authority. Future legislation in Israel shall be guided by the basic principles of Jewish Law. Wherever the existing law does not provide adequate guidance, the Courts-of-Law shall have recourse to these basic principles.

### *IX. Promulgation*

ARTICLE 78. This Constitution shall come into force on the day of its publication in the Official Gazette.

# Observations on the Constitution

by Leo Kohn

## I. Introduction

THE DRAFTSMAN of a Constitution for Israel does not move in a vacuum. The Resolution of the General Assembly of November 29th, 1947 required a number of provisions to be expressly embodied in the Constitution. These refer, in the first place, to Holy Places, religious buildings and sites, and to religious and minority rights. The Resolution further contains specific directives as regards the internal structure of the State. These provide for the setting up of a legislature elected by universal and secret ballot on the basis of proportional representation and of an executive responsible to such legislature—in short, for the establishment of a parliamentary form of government. Finally, the Resolution prescribed that the Constitution should contain provisions for settling international disputes by peaceful methods, for abstaining from aggressive policies and for ensuring freedom of transit and visit to residents and citizens of the Arab State in the City of Jerusalem. In the following Draft these directives have been closely adhered to except insofar as they have been superseded by subsequent developments.

Apart from these imposed provisions—many of which would in any case have been adopted by the new State—the frame of the Constitution must obviously be influenced by the political and social conditions in the country. The structure of politics in Israel is a result of developments going back several decades. In the course of these developments a highly diversified party system, which now embraces nine distinctive parties with well-defined political and economic platforms, has arisen. The introduction of proportional representation required by the terms of the U. N. Resolution will hardly tend to reduce their number. It may in fact increase them. In these circumstances the British parliamentary system is practically ruled out, although it is not inconceivable that in the course of events comprehensive party blocs would be formed which might in the end result in the emergence of something akin to a two-party system. One thing however, deserves to be noted: the Jewish parties are not of the inchoate character of many of the parlia-

mentary groups in Continental Europe. They have clearly defined attitudes and programs, and their reaction to any specific problem that may arise in the course of a Parliament can with most of them be anticipated with a fair measure of accuracy. This introduces an element of stability which is absent from many continental countries where the attitude of important parties on critical issues is not infrequently susceptible of sudden and fundamental change . . .

If a Constitution is to command the enduring loyalty of a people, it must be rooted in its moral and political traditions. In the case of the Jewish people, these are of distinctive and significant character. Their spiritual basis is the monotheistic conception of the Godhead, invisible, omnipotent, one and indivisible, the embodiment of absolute justice, the Ruler of the Universe, the Father of Man. The projection of that conception in the human sphere is an austere moral code, aiming at the sanctification of matter by the creative force of the spirit. Its ultimate goal is the establishment of the Messianic Kingdom, embodying a rule of universal justice freely acknowledged by all the children of men. From its early beginnings, Judaism aimed not merely at individual perfection, but at the shaping of a social order. Its aim was the evolution of a "Kingdom of Priests and a Holy People" ruled, not by priests or kings, but by the Deity itself, a bold effort at shaping reality in the image of the absolute. Judaism is a design for framing the life of a community in accordance with the dictates of a higher order: kindness to the poor, but justice to be accorded equally to the rich and to the poor; the sanctity of the Sabbath, but no less so the holiness of the working day; freedom of contract, but, above that, the greater freedom of the Sabbatical and the Jubilee Years which restore liberty to the slave and give back to the poor man his lost heritage—such are its characteristic prescriptions.

A Jewish Constitution, if it is to be Jewish and to command the moral allegiance of the Jewish people, must be so framed as to give expression to these timeless ideals. The State of Israel is being rebuilt under modern conditions. It cannot but adopt the constitutional forms and devices through which the mass-life of a modern democracy is being governed. But these forms may well be related to the spiritual order of the ancient Hebrew theocracy under which the divinely

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granted rights of man were immune from royal interference, under which prophets defied kings and governors, under which the holiness of life and the rights of the orphan and the widow were protected by the authority of the Invisible King. It is not by abstract declarations, but by the infusion of the timeless Hebrew tradition into its modern framework, that the Constitution of the new Israel can be rendered truly Jewish. . . .

## II. General Provisions

### (1) Immigration (Article 3).

The State of Israel differs *ab initio* from other polities in that it has not merely to protect and promote the welfare of those who live within its boundaries, but over and above that to provide a home for all Jews who are impelled by spiritual urge or external pressure to seek admission to its territory. This task is of its very essence and it seemed appropriate that it should be stated in the opening section of the Constitution. It is, however, clear that while the right of Jews to immigrate is affirmed as a matter of principle, the administration of such immigration must be left to the legislative and executive organs of the State. The term "regulative provisions" has been chosen to emphasize that the character of these provisions is to be purely administrative and that there must be no limitations based on other considerations such as country of origin, cultural level, economic position, etc. . . .

## III. Fundamental Rights (Articles 12-25)

The group of articles which in this Draft Constitution enshrine the traditional guarantees of personal freedom, represents, like its classic prototypes, a somewhat unsystematic aggregation of rules of private and public law. The rationale of the compilation is to be found not in any legal principle, but in a specific historical experience. They represent the concrete instances in which the abuses of the absolutist State have indicated the need for special safeguards. These rules connote the place which the State itself holds in the legal system of which it is the supreme guardian. They are of little practical importance in normal times. They assume preeminent significance in periods of external or internal tension and transformation. Originally, these "fundamental rights" were designed to protect the mass of the people striving for freedom against the absolute monarch and his small clique of powerful state functionaries. To-day, their essential function is to protect minorities not only against arbitrary measures of the executive, but also against exces-

ses of parliamentary majority rule. In a way those libertarian guarantees are the safeguards of the political growth of society. They make it possible for the minority of to-day to become the majority of tomorrow. Provided that the minority has no designs against the fundamental rights themselves and against the democratic regime as such—in other words, that it does not aim, upon becoming a majority, at stifling the growth of other minorities—it should be given all the legal freedom which the Constitution can assure to it.

There is, of course, danger in this course, but such danger is the price which democracy must pay for its survival. Freedom always lives dangerously. Of course, no constitutional provision can by itself guarantee individual freedom, just as it cannot ensure the perpetuation of the democratic order. In the ultimate resort the democratic system and the guarantees of personal liberty depend on the civic maturity, the national traditions, the educational standards and the economic freedom of the people. This, however, is no reason why the fundamental rights of man should not be proclaimed afresh in every Constitution. The framework of a Constitution is more than a machine for regulating the processes of Government. It is in large measure an instrument for eliciting and moulding the political will and mind of a community. By the inclusion of these fundamental guarantees in the body of the Constitution, these basic rights of the individual and the citizen are invested with a higher authority and rendered immune from easy perversion by the arbitrary decrees of the Executive and its parliamentary supporters. They inculcate into the minds of the people a wholesome respect for human rights and mould the political outlook of those who in time will determine the courses of legislation and of policy.

It may be added that in embodying in our Constitution a Declaration of Fundamental Rights, we are not simply following the models of modern Constitutions, but are renewing ancient Hebrew traditions. Those who first conceived the idea of such fundamental rights at the beginning of the New Era were conscious of their inspiration by the Hebrew Bible. The conception is rooted in the spirit of the ancient Hebrew theocracy. The conception of a supreme invisible King implied the limitation of the powers of the visible one. The notion of the divine origin of all law invested that category with an authority superior to all man-made regulations. In addition, the unique Hebrew institution of prophecy gave to these abstract concepts an instrument of enforcement infinitely more powerful than any court of law. . . .



Such is the ancient Hebrew tradition, nowhere expressly recorded in the Bible, but all the more significant for its general tacit acceptance. It was this tradition which inspired the Bible intoxicated Pilgrim Fathers in drawing up the first American Declarations of individual and civic freedom. Just as in every generation the story of the Exodus from Egypt has become the lodestar of those who strove for national and social freedom, so the Biblical conception of a law superior to the will of kings, a law asserted by spokesmen of the spiritual order, gave rise to the concept of the Rights of Man. "From between the paws of the rock-hewn Sphinx," wrote Henry George, "arises the genius of human liberty, and the trumpets of the Exodus throb with the defiant proclamation of the rights of man" (Moses).

It is appropriate that it should be re-embodied in the Constitution of Israel reborn.

*Human Life and Dignity (Art. 12)*

It may be asked what meaning attaches to a general declaration that "the State shall ensure the sanctity of human life and uphold the dignity of man." The declaration is designed to introduce the subsequent prohibition of the death penalty and of every form of humiliating punishment and brutal treatment. But it goes beyond that. Here, indeed, we are on Hebrew spiritual ground. At a time when respect for the sanctity of life and the dignity of man has sunk to an unprecedented level, it is fitting that a Hebrew Constitution should proclaim them afresh as the basis of civilised society. Nor is the significance of the declaration exhausted by such reassertion. There may well be situations in which a judge or legislator may find valuable support in this Article of the Constitution for advocating a specific course, possibly in defiance of current passions.

As regards the proposed abolition of the death penalty, it is of course realised that there are strong arguments against this course, and against the embodiment of the prohibition in the Constitution. Here again it is suggested that the Constitution-builders of Israel should take into account Jewish tradition, which, in its Talmudical development, is certainly opposed to the death penalty.

*Personal Liberty (Art. 13).*

In drafting this Article, the aim has been to avoid abstract principles and make the remedy against wrongful arrest as specific as possible.

As regards sub-section (2) prohibiting preventive detention, an effort has been made to meet the needs of emergency situations without sacrificing the basic principle. There are two established methods of meeting the problem of the

limitation or suspension of individual liberty during a state of emergency. The one is the French and Continental method of the "declaration of a state of siege" under which by a proclamation of the Civil authority the whole civil power passes to the Military authorities except insofar as the latter empower the Civil services to continue the exercise of their normal functions. The other is the British system which relies upon an undefined Royal Prerogative automatically released by the state of war and interpreted by the Judges, the end of the emergency being followed by an Act of Indemnity covering retrospectively any excesses committed by the Military during the state of emergency. Both methods open the door to arbitrary action by the Executive and the Military authorities. In effect, they nullify the value of all constitutional guarantees because it is precisely in times of national emergency that these safeguards assume practical importance.

In the Draft an effort has been made to break new ground by requiring specific legislation—specific both as regards content and length of duration—for the grant of such emergency powers to the Executive and requiring, in addition, that the exercise of these exceptional powers be subject to continuous parliamentary control. The purpose of this provision is to compel the Government to give regular account of the use it is making of these exceptional powers by publishing the names of the persons so detained and indicating the reasons and length of their detention, etc. . . .

The term "incommunicado" used in sub-section (4) implies the denial of the right to confer with the detainee's family, friends and legal advisers.

As regards sub-section (6), the prohibition of extraordinary Courts and of the subjection of civilians to the jurisdiction of military tribunals is regarded as essential. It is impossible to reconcile the extension of military jurisdiction over civilians with the doctrine of the Rule of Law which should be the basis of every constitutional regime. Force may be needed for protecting the State against external and internal enemies, but its moral authority will be gravely imperilled if the principle of force is transported from the passionate scene of open conflict to the deliberative atmosphere of judicial proceedings. No emergency, however urgent, can justify the investment of the military with the functions of the guardians of justice in relation to the civilian population. The conception that conditions of public disturbance necessarily require the establishment of military courts to judge civilians is



an atavistic relic of the absolutist State. However grave the disturbance, it is only in the *execution* of judgments, but not in their *making* that, in the absence of an effective civil administration, the assistance of the military power may be required. . . .

As regards sub-section (6), a critic questions the wisdom of imposing upon our State the financial obligations which may arise from this provision. It seems, however, essential that the constitutional safeguards against wrongful interference with individual liberty should be reinforced by a material guarantee; otherwise they may be of little value to those most immediately concerned. . . .

*The Right of Political Asylum (Art. 20.)*

Art. 20 affirms what is commonly known as the principle of political asylum. It seemed appropriate that the Jewish People whose sons have suffered so much from religious, racial and political persecution should, upon reassuming statehood, extend protection to others similarly persecuted. As a test of what constitutes such persecution the denial of the rights and liberties guaranteed by this Constitution has been chosen. This gives concrete legal substance to this constitutional guarantee and implicitly denies the protection of the Constitution to those guilty of inciting to racial and religious hatred or advocating the suppression of human rights and democratic liberty. . . .

*Social and Economic Declarations (Art. 21-25.)*

It has become customary since the Constitutions of the first post-war period to insert among the fundamental rights not only guarantees of individual liberty but also postulates of social, economic and cultural reform. The underlying idea of this innovation is that mere safeguards of individual freedom are not sufficient to ensure personal liberty and true democracy,—that only a society of economically and socially free men, trained by education to use their brains, is capable of defending its freedom and governing itself.

These provisions do not create positive law in the sense that the guarantees of individual liberty contained in the previous Articles do. They are merely directives from the constituent power to the legislative and executive organs of the new State to translate these ideals into laws and administrative policy.

In many recent Constitutions these provisions concerning social, economic and educational policy are excessively long. They sometimes are little other than theoretical postulates. Not infrequently they reflect the outcome of an internal political and social struggle and are hardly more

than party platforms or manifestos of the class struggle. It is not surprising in the light of all this that a good many of these declarations have remained a dead letter to this day. The lesson to be derived from this failure is evident. If these declarations are to have any meaning and to lead to practical results they must be so drafted as to reflect the ideals of the people as a whole. "A declaration of policy which does not secure general acceptance as a statement of the long-term purposes of the community adopting it therefore fails to achieve its main object; a declaration which makes no appeal to the popular imagination must necessarily fail to influence policy effectively; a declaration which occasions violent and lasting controversy will fail to achieve, and may tend to defeat, the object of exercising such an influence upon policy. A constitutional declaration of social and economic policy must educate; it must unite; and it must promote long term consistency of policy. If it fails to achieve these objectives it is worthless and liable to be dangerous."\*

In the Draft an effort has been made to avoid these pitfalls and to confine the social, economic and cultural directives embodied in these Articles to postulates which command fairly general support among the people of Israel and hence are likely to be translated into legislative and administrative measures. . . .

#### IV. The Legislature

*The Uni-cameral System (Art. 26.)*

As will be seen, the Draft proposes the establishment of a uni-cameral parliament. I think there is no room in our case for an experiment in two-chamber legislation. It would, of course, not be difficult to divide the area of Israel into a number of provinces or departments and have a Second Chamber elected through the representative organs of these sectors. But nothing of benefit to the State would be gained by such a device. In our case, too, the famous dictum of Abbé Sieyès holds good that a Second Chamber is obnoxious if it disagrees with the first and superfluous if it agrees with it. The State of Israel presents so novel a phenomenon and is likely to give rise, during its early stages, to so many problems requiring speedy redress and adjustment, that no delaying obstacles should be placed in the way of the legislative processes. Our legislature will have to be swift-moving and efficient. A Second Chamber, representing vested local or economic interests, is hardly likely to smooth the path of creative legislation.

\*Constitutional Provisions Concerning Social and Economic Policy, published by the I. L. O., Montreal, 1944.

There is, of course, the old argument that there is need for a Second Chamber to act as a brake on the supposedly rash impulses of the popularly elected chamber, as a "cooling" agency to curb any tendency towards the enactment of ill-considered novelties or merely as an instrument of revision and critical re-examination. It is certainly essential that legislation shall be carefully considered and wisely drafted, but there is nothing to warrant the assumption that these ends can only be achieved by a Second Chamber. The modern technique of legislative draftsmanship is so elaborate as to afford endless facilities for improving and revising measures before and during their passage through parliament and to enable every reasonable criticism to be voiced and heard without the cumbersome resort to a Second Chamber. The initiative for a new piece of legislation (if it does not originate from the Civil Service, where it is sure to receive the most careful preparation) comes as a rule from the party or one of the parties in office. In order to reach parliament, its sponsors have first to win over the party itself, the minister in charge of the department and the Cabinet as a whole. The working out is then left to the civil servants of the department in question, and to the legal draftsmen. Before it is introduced into parliament, it will again be critically examined by the party, the Minister and the Cabinet. Once introduced, its general principles will be discussed at great length on the second reading and its specific provisions in the committee and report stages. During all these discussions, public opinion will have every opportunity of making itself heard in the press, at party conventions and public meetings, etc. It is difficult to conceive that any material aspect of the question is likely to be overlooked during such departmental, parliamentary and public discussion.

What additional significant viewpoint, moreover, is likely to be brought into play by a Second Chamber reconsideration? If the Second Chamber is an appointed body—appointed either by the Government or by the First Chamber—it will not enjoy any public authority and status of its own to warrant it holding up or revising legislation passed by the First Chamber. If, on the other hand, it is elected by the same electorate which chooses the First Chamber, what additional contribution to the legislative process is elicited thereby? Is there any significant and legitimate interest that is entitled to be considered and can find expression only through the medium of a Second Chamber chosen by the same electorate but by a different process? There is none. The truth is that the whole "cooling cham-

ber" theory, built up by constitutional lawyers is nothing but a specious device for imposing arbitrary handicaps on creative legislation. There is no reason whatever for assuming that a Second Chamber chosen by provincial or other regional bodies, has special qualifications for revising and improving legislation or bringing to it special viewpoints not represented in the popularly elected chamber. One might just as well vest the function of revision in the Supreme Court or in the Senate of the University. From the purely intellectual and technical point of view, they might be much better qualified to exercise that function.

*The Suffrage (Art. 27.)*

The age of the elector has been fixed at twenty-one in accordance with general usage. This, however, raises an interesting problem arising from the fact that the Resolution of the U.N. bestows the suffrage for the Constituent Assembly on all persons over eighteen years of age. The result would be that while persons of both sexes between eighteen and twenty-one would have a say in the making of the Constitution, they would not thereafter have the right of voting for parliament. If we hold ourselves bound by this provision of the U.N. Resolution, there is no choice but to accept this discrepancy. I do not think that we should be led into conferring the suffrage in Palestine on youths of eighteen because the General Assembly, for some unfathomable reason, gave them the right to vote for the Constituent Assembly.

*Eligibility (Art. 28.)*

In allowing only persons above the age of twenty-five to be elected to parliament, the general usage has been followed.

There is likely to be opposition to the provision of the second sentence that judges, civil servants, members of the armed forces serving with the colours and persons who also hold foreign nationality should not be eligible. That judges should not sit in parliament seems fundamental if their political impartiality is to be safeguarded. The British system, under which certain judges like the Recorder of London or the Lord Chancellor are members of either House of Parliament, is clearly an anachronism and condemned as such by the best legal opinion in England. As for civil servants, this provision of the Draft is a deliberate deviation from Continental practice, which allows a man to sit in parliament and simultaneously to hold high office in the Civil Service. I regard this as one of the most fundamental provisions of the Draft. We have to build up a Civil Service which has no political ambitions, but which

places its abilities and experience unreservedly at the service of whoever directs the Department. When a man enters the Civil Service he must realise that this means an end to a political career for him, but that he is accepting a form of public service which may give him a far more significant, because more continuous, chance of serving the commonwealth than that enjoyed by the meteoric politician. The prohibition against active members of the Forces being elected is, I think, in accordance with the best Continental and British traditions. Finally, the right of eligibility to parliament has been denied to persons who are citizens of a foreign state. Under the provisions of Art. 6(1) (a) of the Draft, a foreign Jew resident in the area of Israel becomes automatically a citizen of our State. As a result, there are bound to be a good many cases of dual citizenship. There can be no objection to such a Jew voting for parliament, but only such persons should sit in the legislature as have only one loyalty—to Israel.

#### *Mode of Election (Art. 29).*

The provisions regarding the electoral system are in conformity with the Resolution of the United Nations Assembly. That Resolution requires the system to be that of Proportional Representation. The arguments against Proportional Representation are well known, but there is good reason for assuming that if the U.N. Assembly had not imposed this requirement, our public opinion (which is in this matter largely influenced by Continental constitutions and by the modes of election to the Zionist Congress, the Jewish Municipalities and the "Elected Assembly") would have insisted upon the adoption of Proportional Representation. The specific mode of election is left by the Draft to be determined by an electoral law. It would appear that the so-called single transferable vote is the most appropriate for our case. At any rate the mode of election ought to be so fixed as to obviate, as far as possible, the impersonal character of the P.R. system and to enable the member of parliament to be known to his constituents and personal relations to be established between him and them . . .

#### *Private Members' Bills (Art. 42.)*

The question of the initiative of private members in introducing legislative proposals is one of the vexing questions of the parliamentary system. On the one hand, legislative measures introduced into parliament must have the backing of the government in power to ensure a parliamentary majority and the necessary financial allocation. For this reason Art. 42, as a matter of principle, vests the initiative in the introduc-

tion of legislation with the Executive Council. On the other hand, one would like to see deputies develop some initiative and not merely act under the orders of party whips. Under the British system the individual member of Parliament has a very limited chance of proposing legislation, depending on the goodwill of the government and on luck in getting the necessary allocation of parliamentary time. In the Draft Constitution the problem has been met by providing that individual deputies may introduce legislative measures, but that such proposals shall thereupon go to a Select Committee of the Chamber where they can be examined in detail and possibly revised and improved. This will prevent any "nostrums" or bills promoted by vested interests from reaching the House. They will be killed in the Committee, as will bills which run counter to the political line of the government in power. If, however, the bill has been so considered and improved, then the Executive Council is required by the Draft Constitution to include it in its legislative programme, to find time for its consideration and to include the necessary financial provisions in its Estimates.

#### *Financial Measures (Art. 44.)*

The provision that no resolution for the appropriation of funds or the increase of any grant may be moved except by a member of the Government represents a vital safeguard of representative government against financial chaos and corruption. Deputies may propose cuts in expenditure, but not increases or new grants. The financial programme of a government forms a closely knit unit, and any additional expenditure voted by parliament without its having been related to the general framework of the government's financial policy would open the gates to financial disintegration and compel the government to allocate public funds to satisfy vested interests who could enlist the support of deputies.

#### *Control of Armed Forces (Art. 46.)*

That the recruitment and maintenance of the Armed Forces be subject to the control of Parliament is an essential safeguard of the democratic order against militarist tendencies. It is well known that in England the Army Act, which contains the code of military law and discipline, must be enacted every year afresh, so as to emphasise that without parliamentary assent the very existence of a standing army is illegal. In our case we need not go as far as that. On the other hand, the principle of the parliamentary control of the Military Forces should be embodied in the Constitution. . . .



### V. *The President of the Republic*

The status and functions of the Head of State in a republic vary considerably in modern Constitutions. South American Presidents have been in more than one case virtual dictators. The President of the United States holds an unique position in that he is both Head of State and director of the government and its policy. The French system, which has been copied by most European republics, assimilates the position of the President to that of the King of England. He acts on the "advice" of his Ministers, which in effect means in accordance with their policy, though there are situations where he may exercise a certain measure of discretion, particularly in the selection of the Prime Minister. In the new constitutions established after 1919 various efforts were made to give the President additional powers. The most notable experiment of this kind was that of the Weimar Constitution which gave to the President a suspensive veto against legislation enacted by parliament preliminary to the consultation of the electorate by means of a referendum. The system worked very badly in Germany in that it made the President a political figure interfering with the processes of government by mobilising, whenever it suited him, the chaotic instrument of the referendum. This inevitably undermined the continuity of parliamentary legislation. There can be little doubt that it was the German President's special position and powers which enabled the democratic framework of the Weimar Constitution to be progressively undermined and finally destroyed.

In our case there is clearly no room for a President on the lines of the American system or of the Weimar Constitution. Public opinion in Israel would not accept a President invested with powers to hold up legislation pending a referendum and to legislate by decree as President Hindenburg did in the final phase at the behest of Chancellor Bruening. Our President cannot be other than an organic part of the structure of popular government. His functions should be those of an impartial Head of State representing the country and the people as a whole, internally and externally. Each official act of his should be countersigned by the Prime Minister or the competent member of the Government, who would thereby assume responsibility for it. It is only in regard to the selection of the Head of the Government and the dissolution of the Chamber that, as previously stated, he will enjoy some measure of discretion. He will have to use even that measure with great circumspection if he is to avoid

being dragged into the turmoil of party politics and to end as did President Millerand when he tried to give a definite turn to political affairs in France.

#### *Mode of Election (Arts. 50-53.)*

It is proposed that the President be elected by the Chamber of Deputies. In European Constitutions this method is now generally in vogue, and it would seem that it should also be adopted in our case. There is little justification for requiring the President to be elected by the direct vote of the people and incurring all the turmoil and expenditure involved therein if his functions are merely those previously described. . . .

### VI. *The Executive Council*

The provisions governing the framework of the Executive have in general been modelled on the British Constitution. The Prime Minister is the key-stone of the edifice of government. It is he who selects the team of ministers, allots their offices and maintains the unity and central direction of executive policy. He is also the connecting link between the Cabinet and the President of the Republic. His resignation entails that of the Cabinet.

#### *Composition and Status of Cabinet (Art. 62.)*

It is provided that the total membership of the Cabinet shall not exceed fifteen and that it may include ministers without portfolio. This number will enable all the Departments of State to be represented in the Cabinet and will also make it possible for one or two men of special qualifications to be included who will be free from the burdens of departmental work. In coalition governments, such as we are likely to have, there may not infrequently be need of such appointments. A cabinet of fifteen, even if it is a coalition government, may develop a corporate mind about larger issues of policy. Too large a cabinet is likely to produce an internal clique within the government.

The British rule that all Ministers must have seats in the Chamber has been followed. It seems a sound principle that no man should hold ministerial office who has not secured an expression of public confidence by being returned to parliament. The institution of "technical" ministers, which has often been tried on the Continent, particularly in times of parliamentary impasse, has not yielded encouraging results. Captains of industry and other specialists and experts should serve as advisers to ministers. They should not direct policy. Nor has the elevation of civil servants to ministerial office proved helpful. The atmosphere of the Civil Service and the advisory habits of its members



are not calculated to produce men fit to stand the turmoil of parliamentary strife or to carry the responsibilities of making and directing policy.

*The Prime Minister (Art. 63.)*

The primacy of the Prime Minister in the Cabinet has been described in the opening remarks. It is he who selects the other ministers (Art. 56.) It appears essential that in this matter he should be left a wide measure of discretion. This applies, in particular, to coalition governments, such as we are likely to have. To require ministers to be elected individually by parliament is definitely harmful. It was tried in the Constitution of the Irish Free State. It gave rise at the beginning of each parliament to an acrimonious personal debate on the merits and the past of the candidates which hardly enhanced the dignity of the House.

*The Civil Service (Art. 67.)*

It is envisaged that as soon as possible after the enactment of the Constitution an independent Civil Service Commission shall be established and that legal regulations be enacted to govern the organization of, and admission to, the Civil Service. It was recognized that during the initial stage a number of officers from the Jewish Agency and from the Mandatory Government would have to be taken over into the service of the State of Israel and that it would not be appropriate to require them to pass an entrance examination. It was also realized that there might be cases, especially during the early years of the new State, when there might be need for the appointment as senior officers of men who had distinguished themselves in other walks of life but could not be expected to submit themselves to examination. It is these considerations which explain the phrasing of this Article. . . .

**VII. Financial Control**  
(Article 69)

The provisions of Art. 69 on the appointment and functions of a Comptroller and Auditor-General follow British and Colonial practice. In Continental countries these functions are frequently vested in a Board composed of civil servants. The manner of his appointment and the length and conditions of his service are to be fixed by law. It is not envisaged that the appointment shall be one for life.

**VIII. Executive and Legislature**

It is a truism that the present-day system of parliamentary government represents a reversal of the principle of the separation of powers which two hundred years ago was seen as the very essence of democratic government. The

modern cabinet, which has an almost exclusive initiative in regard to the preparation and introduction of legislation, and which, in addition, exercises a wide measure of delegated legislation, is in fact, if not in name, a legislative organ. In the words of President Lowell the modern cabinet "legislates with the advice and consent of parliament." On the other hand, a parliament which spends much of its time in discussing executive action, which has the power by such debate to influence that action and in the ultimate resort to destroy the executive and supplant it by another committee from its own ranks, is in no small measure an executive agency.

The differences between the various types of parliamentary government arise from the concentration of initiative and direction in one body or the other. Parliament may be the master of the Government, as in modern French practice, or political initiative and control may rest primarily with the cabinet, as in the British system. The advantages and disadvantages of the two systems have often been described. Under the French system, parliament and every member of it exercises real power. There is little opportunity for executive tyranny. But the system suffers from the perennial instability of government. "The date upon which a French government assumes power," writes Professor Laski, "is certain to be the day upon which its fall from power is organized." The cabinet, he points out, has no effective leadership over the business of the Chamber. Its legislative projects go to the Commissions exactly as do those of any private member. They emerge as fully changed; even its financial measures are amended out of all recognition and with little regard to the coherency of their plan. A French government rarely has the time to carry out an ample legislative programme, and behind it there always exists the shadow ministry of the parliamentary commissions.

As against this, the British system gives the government effective control of the Chamber and its work. It has the initiative in matters of legislation. It fixes the budget. It can dissolve parliament. On the other hand, the British system can easily degenerate into an almost unlimited cabinet autocracy. By holding the threat of dissolution over the private member, the cabinet can get its way even when a large body of the House is not with it.

In the Draft Constitution an effort has been made to steer a middle course between these two dispensations. On the one hand, the position of the legislature in the framework of gov-

ernment is well established. The principle of ministerial responsibility to the Chamber is expressly affirmed. The Chamber is normally intended to run out its full course. The private member has a chance of introducing bills and getting them accepted. The armed forces are under the control of the Chamber. Its assent is required for any treaty. It elects the President of the Republic. No man can attain ministerial office who has not risen from its ranks. Most important of all: in times of emergency the constitutional guarantees of personal freedom can only be suspended by specific legislation and subject to parliamentary control. On the other hand, the Executive Council is definitely invested with the leadership of the Chamber. It has sufficient powers to enable it to pursue a legislative program meant to ensure a co-ordinated and balanced financial administration. Moreover, the fact that in the last resort parliament may be dissolved if its partisan tactics produce an impasse gives to the cabinet some measure of protection against irresponsible attacks and subversive scheming. . . .

### IX. *The Judicial Power*

#### 1. *The Status of the Judges (Art. 72.)*

Judges are appointed either, as in Continental countries, by the Minister of Justice, being promoted from the lower to the higher judicial offices on civil service lines; or by the King on the advice of the Cabinet, as in England; or by popular election, as to some extent in the United States. The defects of the last system are so evident as to rule it out for us. Both the Continental and the British systems have made it possible for political and party appointments to be made to the judicial bench. In England, if a vacancy occurs in the Courts, the Attorney General and Solicitor General have the first refusal. Not infrequently, politically minded barristers reach the bench by entering parliament and being rewarded for their political services when a vacancy occurs on the bench.

In the Draft Constitution an effort has been made to break new ground in this direction by providing that the Minister of Justice, in tendering advice to the President of the Republic on the appointment of judges, shall be "guided" (which in fact means directed) by the recommendations of a Selection Board consisting of two judges, two senior officials of the Ministry of Justice, three deputies and three representatives of the Bar Association. This Selection Board shall be reconstituted annually from these four categories. It would seem that such a mode of selection will rule out any possibility and any suspicion of party patronage. As for

the judges of the Religious Courts it is provided that they, too, shall be appointed by the President of the Republic, but on the advice, not of the Minister of Justice, but of the Minister for Religious Affairs who in tendering such advice shall be guided by the recommendations of the Supreme Religious Council of the community concerned.

As regards the tenure of office, it is proposed that the age of retirement of judges shall be regulated by law. It is certainly desirable that there should be an age limit. Judges shall not be removed from office except for misbehaviour or incapacity upon a resolution supported by two-thirds of the deputies. The judges of the Supreme Court and High Court in England and the Dominions cannot be removed except by a resolution passed by both Houses of Parliament. As there is no Second Chamber, a vote supported by two-thirds of the Chamber is required for the removal of a judge. (In the case of Religious Courts the requirement of a motion by the Supreme Religious Council of the community concerned has been added as a further safeguard). The result has been made to apply to all judges but it is a moot point whether judges of the lower courts (district judges and magistrates) might not be removed for incapacity, infirmity or misbehaviour by a certificate under the hands of the Minister of Justice and the Chief Justice.

#### 2. *The Constitutionality of Legislation (Art. 76.)*

As previously described, the conception of the judicial review of legislation has been embodied in the Draft Constitution. It makes the judiciary the guardians of the Constitution. When there is a written Constitution there is need for some such guardianship to prevent any infringement of the overriding principles of the Constitution by a legislative enactment. The conception has essentially been developed in the United States. It is hardly accepted on the Continent and has, of course, no place in the British system, where all laws can be changed by an act of parliament. (It is accepted in Ireland). In America the question of the constitutionality of any law can be raised only as an incidental issue in an ordinary judicial proceeding. The court deals with it merely insofar as is essential to the decision of the case before it. The U. S. Supreme Court has held that a judgment declaring a statute to be unconstitutional must not be taken as a repeal of such statute; the question may thus be raised afresh in any new proceedings. In fact, however, a judgment of the Supreme Court to the effect that a statute is repugnant to

the Constitution has the effect of rendering it invalid.

The use and abuse of the power of judicial review by the American Courts has become a favourite subject of sociological analysis. Judges have knowingly or unwittingly allowed their political and economic views and prejudices to influence their interpretation of the Constitution. The individualistic principles of the U. S. Constitution have been so construed by conservative judges as to thwart measures of social reform enacted with the strong support of the legislature and the electorate. The most notable case in recent years was the havoc played by the United States Supreme Court with several parts of the New Deal legislation, which had been passed by substantial majorities in Congress and approved by the President.

In spite of all this, the power of judicial review in the United States stands unchallenged. In our case the matter may not be of such crucial importance because the Constitution can fairly easily be amended. Moreover, the general principles enunciated in the Draft Constitution are not of the vague and individualistic type capable of reactionary interpretations. If, however, there is objection to the introduction of the principle of the judicial review of legislation, then some other method must be found for preventing laws from being placed on the statute book which, in however indirect measure, are incompatible with the terms of the Constitution. A method to ensure this may be for a special all-party committee to be set up in the Chamber consisting of legally trained members who are to give their view at some stage of the passage of a bill as to whether it is watertight in regard to the Constitution. Of course, in such a committee there may be differences of opinion and the issue would then be decided by a majority vote on party lines.

Supposing that the Chamber, at a time of internal trouble, passed a law which indirectly involved a curtailment of individual liberty, and the opposition challenged it as being an infringement of the Constitution, the objections of the latter might well be over-ruled in the Committee. As a result what might, in an objective view, constitute a breach of the Constitution would become law without anyone being able to prevent it. It has been suggested that another way out of the dilemma might be for the Chamber to send each bill, before giving it final approval, to the Supreme Court for an opinion as to whether it was in any way incompatible with the Constitution. This, however, would again bring the judges into the political arena, which

is exactly what the opponents of the judicial review of legislation want to prevent.

There seems to be no fool-proof escape from this dilemma. Either the courts are given the power to adjudicate on the question whether a law is in conformity with the Constitution, in which case the judges are made the adjudicators on political and economic issues; or the interpretation of the Constitution is left to the parliamentary majority in power, in which case the overriding protection extended by the Constitution to the individual against majority abuses ceases to be effective. It is submitted that the method followed in the Draft of maintaining the principle of the judicial review of legislation while providing for a not too difficult method of amending the Constitution offers a reasonable way of avoiding the horns of this dilemma. If the Courts disqualify legislation for which there is a strong and general demand, the Constitution can be so amended as to permit of its being enacted.

It should be added that the adoption of the principle of judicial review of legislation also meets one of the principal arguments against a unicameral legislature. There is little danger of a parliamentary majority riding rough shod over the basic rights of minorities if these are safeguarded by the Constitution and the courts are appointed the guardians of that Constitution. . . .

#### X. *The Amendment of the Constitution* (Article 75)

Of the two methods generally accepted of amending a Constitution—a qualified majority in parliament or a referendum of the people—the former has been adopted, with the additional proviso that the amendment must be passed by the two-thirds majority in two successive sessions, and that at least six months must have elapsed between the two enactments. This should prove a sufficient safeguard against rash amendments. On the other hand, this method is not too complex to hold up necessary changes in the constitutional framework. Constitutional amendment by referendum, which is the method practised, for instance, in Australia, seems hardly adequate. The issues involved in amending a constitution are, for the most part, so complex as to defy rational solution by the crude device of a popular vote.

#### XI. *The Law* (Article 77)

The provision that the laws in force at the time of the enactment of the Constitution shall remain valid until repealed or amended, except if repugnant to the Constitution, involves the continuation of the enactment of the Council of State made after the proclamation of the State



the mandatory regime that enacted by the Council of State during the intervening period. It further subjects all the laws taken over from the mandatory regime to the overriding authority of the Constitution. The question as to whether there is any such repugnancy can clearly only be decided by the Courts of Law.

It is furthermore proposed that in preparing future legislation, the basic rules of Jewish Law shall serve as guiding principles and that until the enactment of new codes of law, the Courts in filling gaps in the existing law shall have recourse to these basic principles. It is submitted that while no speedy change-over from the legal system taken over from the mandatory regime is practicable, the new law to be enacted in Israel shall be based on the principles of Jewish civil law. Jewish law represents one of the most

massive and significant systems of jurisprudence. Rooted in the Bible and Jewish oral tradition, it has been developed by a vast literature of responsa to meet the requirements of the ever-changing conditions and environments of Jewish life. It is one of the most arresting manifestations of the Jewish mind. It has influenced Roman law in its Byzantine development, and profoundly affected the evolution of Natural Law, English equity law and the legal philosophies which shaped the codifications of the nineteenth century. Based on the ethical and social principles of the Bible, it has been continuously developed by theoretical study and practical application, and represents an integral part of the Jewish national heritage. It should be re-stated and applied to the needs of present-day life and thus made the basis of the new Law of Israel.

## To Young Commanders

by David Ben-Gurion

**Y**OU LEAVE THIS CAMP today as commanders in the defense army of the State of Israel. This is a great privilege and a heavy responsibility. You are about to become commanders in the world's youngest army, an army not yet a year old. Some 80% of its personnel was not in the underground Haganah. They received their training and equipment only after the 15th of May, upon the establishment of the State of Israel. Nevertheless, this young army need not fear comparison with older, more tried armies. Our army has survived its ordeal of fire with success and with honor, in spite of the fact that it was raised and organized, trained and equipped in the very thick of battle. Operations "Nachshon," "The Ten Days," "Southern Week," the sixty hours in the Galilee battle—heroic and victorious as they were—have already become dates of great historic significance. We have not yet reached our objective: decisive victory and peace. Only one region of the country has been completely liberated by our army: Galilee. Jerusalem is still partially besieged and under enemy fire; the Sharon and Shomron still face enemy attack; and the Negev is not yet wholly freed. Webs of military and political intrigue are still being spun to ensnare us, and it may be that a difficult stretch of road still lies ahead of us. Our existence, our freedom, our independence, our security, the possibilities for

immigration and colonization, the ultimate settlement of our boundaries are all dependent on the strength and abilities of the Israeli defense army. We must therefore not lull ourselves into a sense of false security on the basis of completed achievements and victories. Our army has not yet accomplished its task, and it is incumbent upon us to continually scrutinize the qualities and effectiveness of this instrument of Israel's liberation.

Our army has displayed rare qualities: great skill in battle and fearlessness in the face of death. In these few short months of its existence, the army has inscribed eternally noble and glorious passages in our history. But at the same time there have appeared faults and defects which we dare not overlook.

It is with great regret that I comment on our inadequate discipline. Discipline is unsatisfactory both among the soldiers and their commanders, among all ranks, from the lowest to the highest. I need not explain the value of discipline in the army; certainly, not more than I need explain the importance of air for breathing.

I know the causes of these defects. Our army is still young and without a military tradition. The Haganah bequeathed to us many rare and admirable traits, but an underground self-defense organization is not fitted to the task of developing military discipline, and a disciplined army cannot be created overnight. However, time is of the essence. We cannot allow ourselves to wait, and we must accomplish in one year

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(FROM an address by the Prime Minister of Israel at the graduation ceremony of a military school).

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what others do in a generation. It is the duty of the commanders to implant in the army the proper appreciation of discipline and the ability to act almost automatically in the spirit of absolute discipline. They will succeed in this task if they themselves become living examples of discipline.

The sense of economy is insufficiently developed in our army. The combat and service units are both uneconomical in their use of food, fuel, vehicles of transportation, time and even ammunition. The nation's precious materiel which has been acquired with great effort, heavy expenses, and often even at the cost of blood is being wasted for a lack of system and efficiency.

The commander must realize that the strength of the army is determined not only by military training and enthusiasm, but also by good administration, efficient procedures and concern with a thousand and one minute details. To disregard these details is tantamount to sapping the strength of the army and to destroying the nation's ability to maintain the army in good shape. Victory is not achieved by self-sacrifice alone. Adequate organization is perhaps three-quarters the secret of victory.

I shall refer to another phenomenon in our army life: driving at high speeds. The General Staff has determined the maximum speed at which military vehicles may be driven, but neither the commanders nor their men obey the order. Careless speeding brings in its wake damage and mishaps.

The army does not always act respectfully toward the civilian population, both Jewish and Arab. There have been cases when soldiers and commanders acted haughtily and used methods bordering on violence in their inevitable contacts with the civilian population, in enforcing curfew regulations, searching, screening, *etc.* I want to note with pleasure that these are rare occurrences, yet even these occurrences besmirch the army. It is the duty of both private and commander to treat respectfully not only their comrades in arms, but also every civilian, Jew or Arab, even when the person concerned is to be interned or placed under arrest.

One other observation: the army is the one environmental sector in the country in which citizens who hail from all the lands of the Diaspora, from all communities and classes, meet as equals under the same living conditions. This offers a unique opportunity to correct a serious and destructive defect of our national life: fragmentation and too many divisions. I do not refer here to the mostly synthetic political and ideological divisions, I now have in mind particularly another kind of division which stems from social,

economic and communal differences, and from significantly different modes of life and levels of education.

Although our community sincerely champions democracy and political equality, our life is in fact dominated by a kind of aristocracy which is detached from the life of the masses. Most of the active members of our parties and political movements, of our national and local institutions have acquired the same education, they read the same books and live under more or less similar conditions, in spite of the fact that they belong to different political and ideological groupings. In their daily lives they have no real contact with the masses, who live in the poor neighborhoods, in misery and penury. I have in mind particularly our people of the Oriental communities.

The army is the one place where youth of all classes meets. This offers us a great and unique opportunity to heal the breaches, to mend the deep divisions and to bring together the community under equal and equalizing conditions of life. In this way we will create Jewish unity and fraternity, not only with words and ideologies, but through deeds: eliminating illiteracy, raising their level of education and strengthening their sense of human and Jewish values. It is the duty of our commanders to dedicate their time and abilities to the poorer stratum of our population, to raise their sense of self-respect, to help them develop good habits and cultural aspirations, the values of pioneering youth. This will not come through philanthropy or "charity," but through the comradeship of arms and of common danger. The commander must satisfy himself that army life is called upon to teach young men and women not only how to use weapons and wage war, not only orderliness, cleanliness and discipline. The army is expected to enrich their inner life, to wipe out social and communal divisions, and raise their cultural and spiritual level. They must leave the army better Jews and better human beings. The army must become the forge of Jewish fraternity and spiritual elevation for the younger generation. The commander must bear the responsibility not only for the military training of the soldier, but also for molding his character.

A unique military problem stares us in the face. We are few and our enemies are many. How do we account for whatever success we have made until now?

Only because of qualitative differences, because of our moral and intellectual superiority. This is the great and precious inheritance bequeathed to us by Jewish history, Jewish educa-

tion, Jewish suffering and Jewish vision—by generations of persecution and homelessness, by two thousand years of universal Jewish education, by a life-long devotion to Torah and the vision of the Prophets and the sages. To the technical and professional knowledge which we will gain from the experience of other armies, we will have to add the elevation and the fullest possible realization of our moral and intellectual qualities. Our army will always have to be small, but we will have to make it a first-rate army, both in the professional-technical sense and in the spiritual and moral sense. Our situation requires this of us. Our capacities make it possible. In practice, this means that we must not be concerned only with physical training and cultivating bodily endurance, with the sharpening of all the senses, with mechanical skill, with the know-how in using all of the most modern weapons, with conditioning ourselves to action in the highest spirit of discipline, with acquiring the most complete knowledge of military history, with learning to use all the newest discoveries in science, technology and communication, with problems of equipment and logistics. All these things will not suffice. In the final analysis, war is not waged by the cannon or the airplane, but by the person who uses them, who puts them into action. The decisive qualities of the fighting man are not his physical strength or technical skillfulness—although their importance should not be underrated—but his *spirit*, his intellectual and spiritual powers, his knowledge and intelligence, his mental courage, his perseverance, his devotion, his fearlessness in the face of danger, his creative initiative, that noble and sublime element hidden in the very depths of his soul which is “stronger than death.”

Here is the core of the commander's responsibilities. A genuine commander is he who can serve as an example through the qualities of his own personality, who is able to educate others by the very nature of his being. Only the living example of the commander's devotion to the great values for which we are fighting will develop in his soldiers love and obedience, and awaken in them sources of the greatest heroism which lay dormant in the soul of every human being. Our secret weapon is the sublime spirit of man. And we will need this weapon as long as we face the danger of war. The ideal commander is he, who by his own way of life is an example, is able to endow others with this secret weapon.

Our future, the future of the Jewish people, will not be built by the sword. Warmaking is not a Jewish vocation. This war has been im-

posed upon us. We have been forced to fight for our independence, for the liberation of our country. We will fight as long as these objectives are endangered. But our future will not be built upon the army. The future of Israel will be built only on our ability to work and create, on colonization in the countryside and town, on developing industry and agriculture, on scientific and technical accomplishments, on the blossoming of art and literature, and the vision that we will bequeath to our youth and to the coming generations will be the vision of the Prophets of Israel: honest and purposeful labor, justice and peace, fraternity and freedom. The political and social system toward which we strive can be formulated in the ancient words “Love thy neighbor as thyself.” This is the vision we are destined to realize in our lives. We will draw the sword from the sheath to protect our freedom, our homeland and the vision of our prophets, only when attacked, when fighting is forced upon us. A generation ready to die for these values will never be defeated.

## The “Internationalization” of Jerusalem

by Eliezer Liebenstein

**T**HE IDEA OF placing Jerusalem under an international regime was never suggested in connection with Jewish interests. Neither does it have any connection with Arab interests. The major basis for it is the problem of the “holy places”—that is, the Christian holy places. It is essential, therefore, to examine this idea and to see whether it is true that the safety of shrines and the holy places requires “internationalization,” or whether the opposite is true—that a strong “native” government would be more concerned and better equipped to defend the honor and safety of these places than any international combination of powers.

What does history teach us in this respect?

The historic period which concerns us most in this respect is that of the last four hundred years. It begins in the year 1517, when Jerusalem was conquered by the Turks, and ends in 1948, with the termination of the British mandate. As far as the political regime in Jerusalem is concerned, it is possible to divide this period into three stages: from the beginning of the Turkish conquest until the decline of the Ottoman Empire, that is, from 1517 to the beginning of the nineteenth century; the period of the decline of the Ottoman Empire up until the expulsion of the Turks from Palestine in 1917; the British mandate, from 1917 to 1948.

Whatever else may be said concerning the rule of the Ottoman Turks in Palestine, it cannot be denied that they watched over the holy Christian places with great care.

This situation began to change as the Ottoman empire became weaker and its authority in Palestine diminished. Jerusalem became a target of international intervention on the part of the great powers. The European powers acquired specific political rights within the Holy City—some of them shared in common and some of them held separately. Each power felt it necessary to "defend" the holy places held sacred by the majority of its citizens (even in cases when the government itself was anti-clerical, as, for example, in the case of France, 1848 to 1851), and one power began to quarrel with another concerning its rights. "Christian Jerusalem" became a recognized center of international intrigue. More than one international dispute was caused (or rendered acute) as a result of this "international supervision" of the Holy City, and at least one major war—that of 1853-1856—resulted in no small extent from the disputes of the different churches in Jerusalem. This was undoubtedly the most unnecessary and most absurd war of the nineteenth century. As far as the dignity and integrity of the Christian holy places were concerned, this was one of the most shameful periods in their history. Each sect interfered—by means of the power-politics employed by the particular government it leaned upon—with the worship needs of its rival, and in this way some shocking damage was caused to the places held sacred by all of them. A striking example of this is the fact that the dome of the Church of the Holy Sepulchre was not completed over a period of many years (during the middle of the 19th century) owing to the conflicting claims of Christian sects and the power politics played by the governments supporting them.

An end came to this situation with the conquest of the country by the British in 1917. Whatever may be said in criticism of British rule in Palestine in other respects—and a great deal might be said as is well-known—there is no denying that, as long as it was strong and stable it watched over the Christian holy places faithfully and freed them from the shame of the period of "capitulations" and "consular commissions" just referred to. The various Christian countries realized that the government in question was powerful and unequivocal, and that it would not tolerate any exploitation of inflated religious grievances for political or diplomatic purposes. In general, the British attitude to-

ward the various Christian churches was quite fair and impartial, and complaints against it in this respect were few. As a result, the various rival churches realized that it would be best for them to center their efforts on constructive enterprises and avoid political entanglements as much as possible.

This was the case as long as the British Administration in Jerusalem was more or less sure of its ground. No sooner, however, had talk begun concerning an "internationalized Jerusalem," in 1947, than anarchy took over again, in more extreme forms than ever. The decision of the United Nations to make Jerusalem an "international" city turned everything upside down. The holy places of all denominations—among them the Christian holy places—were the first victims of these chaotic conditions and the game of political intrigue in the guise of religious "interests" came to the fore again. Our old acquaintances of the period of "capitulations" appeared again on the scene. Cynical atheists began a diplomatic crusade in defense of the holy places.

This is no accident. So long as Jerusalem is in the hands of a strong and uncompromising "native" government, the various powers have little hope of exploiting the matter of the holy places for their political or diplomatic aims. A separation between secular and religious matters is desirable in the interest of both. A local government will always be interested in a fair and impartial policy with regard to the various religious communities of the Jerusalem area and its holy places, inasmuch as any grievance or controversy in this respect might lead to a general conflagration and turn Jerusalem into an international problem.

There is no doubt that the most reliable authority over the Holy City—with all its shrines and holy places—is a strong local government, both civilized and stable, concerned with the safety of the sacred places but interested in avoiding exploitation of these places for political purposes, in other words—a government which has an attitude of respect toward the shrines of the Christian world, but being non-Christian itself, cannot be suspected of taking sides in any of their sectarian disputes. In the present conditions it is the state of Israel which comes closest to fulfilling these terms as an impartial guardian of the Holy City of Jerusalem with its Christian shrines and sacred places.

From the Christian point of view then, as well as from the Jewish, no better solution could be found for Jerusalem than its integration within the state of Israel.



# The Israeli Covenant

by Carl J. Friedrich

## I

**WHILE THE CLASH OF ARMS** with the Arabs continues, the people of Israel are getting ready to organize themselves under a constitution. After the United Nations Assembly had voted the partition of Palestine, and resolved to transfer the government authority in part of the mandated territory to the predominantly Jewish inhabitants for the purpose of enabling them to establish a state and to realize their dream of a homeland, a UN commission sought to bring about a peaceful transfer of this authority, but failed, largely because of British failure to cooperate and Arab intransigence. Thereupon the leaders of the Jewish people in Palestine proclaimed the State of Israel on May 14, 1948 and immediately proceeded to set up a provisional government. Such a step, though not envisaged by UN until after a constituent assembly had come into being, was absolutely essential, if the Jewish people were to be in a position to fight back and defend themselves against Arab aggression which defying the decision of the United Nations attempted to conquer Palestine by force of arms. This fight the Jews won, as was to be expected, since they had both know-how and faith on their side. The provisional government could spring into existence with such effectiveness, because the Jewish Agency in Palestine had slowly evolved what has been called a "state within the state," and a "shadow government." Knesset Israel, Asefat Ha-nivkharim, and Vaad Leumi between them constituted an actual governmental system, as the Commission of Inquiry noted a couple of years ago.

## II

THE United Nations, by a Declaration embodied in a Resolution of the General Assembly of November 29, 1947, stated specific requirements to be expected of any constitution proposed for the new State of Israel. These requirements grew out of the entire history of the origin of the new State, and in the view of their

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authors were undoubtedly absolutely binding. However, whether the United Nations can rightfully expect to wield such absolute authority over the constitutional, that is to say fundamental, law of Israel may well be doubted in light of their failure to protect the new state against its external enemies, and UN's inability to enforce its own will. Unlike the occupying powers in Germany who are in a position to prevent the Germans from doing anything but what is compatible with their expressed will, the United Nations can do so only within narrow limits. To be sure, an outright defiance of basic aspects of the settlement, such as a totalitarian persecution of the opposition (including the Arab minority), might well precipitate a crisis, and result in a refusal to recognize the constitution. But a proposal which sticks closely to the requirements, and only deviates from them on reasonably arguable grounds, may be considered legal, at least within the framework of Western democratic ideology. For Liberal democratic doctrine holds that the ultimate source of sovereignty is the people,—in this case the people of Israel.

Within the framework of the limits just stated, the Resolution of the United Nations may be considered "authoritative counsel,"—a part of the novel procedure of recognizing a new nation as having come into existence by local as well as international events. It stands to reason that such "authoritative counsel" should take account of past events and hence seek to protect holy places, religious buildings and sites, and the rights of minorities, including especially religious minorities. To reinforce these basic requirements, the resolution proceeded to outline certain general prerequisites regarding the pattern of the government, and its international relations. These recommendations seem rather unfortunate, to say the least. By insisting upon a combination of proportional representation and of an executive responsible to a unicameral legislature, the United Nations fastened upon the young nation that system of democracy which historical experience has proven to be least satisfactory and stable. Maybe, the constituent power in Israel would have chosen this system, anyhow,—the Continental European background of many of the minds involved makes this quite probable,—but the international guardians of the democratic future of the young republic surely might have thrown their weight in the opposite direc-

tion. It is to be hoped that the unusual difficult position of Israel, externally, will help to stabilize this unstable pattern, as has happened in Ireland.

### III

VIEWING the constitution as a whole, one is justified in praising the basic simplicity of the pattern and the progressive outlook which pervades it, and which is yet tempered by a sense of the long tradition of a proud people who after centuries of dispersion have at last reconstituted themselves a politically organized nation. The over-all consideration of the constitution may properly be divided into three parts: (a) its progressive tenor expressing the political philosophy of the dominant parties of Israel, Mapai and Mapam (b) its religious undercurrent, linking it to the Bible; (c) its pattern.

(a) Mapai, Palestine's Labor party, is characteristically social democratic in outlook and point of view. At the last General Federation of Labor (Histadrut) conference it drew the majority of votes (53.7%). The highly organized, powerful Trade Unions of Israel, led by very superior men with extended experience in the European Labor movement, dominate the political life of Israel more than do unions in any other country. They combine deep convictions about radical democracy with a vigorous belief in socialism and collective action through the state. Strongly anti-totalitarian, the social democratic progressives of Europe are non-the-less inclined toward placing more confidence in the state than most Americans. To this tendency the new constitution bears clear witness in such provisions as those of article 22 whereunder the state of Israel is enjoined to "endeavour to ensure to all its citizens without distinction a decent standard of living and a fair and equal opportunity of earning a livelihood." But such provisions are nothing novel in twentieth century constitution-making; many of the constitutions of the period after World-War I contained similar articles, indeed often in much more elaborate form. The constitution of Israel has profited from their experience and has cast these provisions in more compact form.

(b) While the bill of rights is discussed in greater detail below, it is worthy of general comment that the constitution clearly expresses a matter of profound symbolic significance: the ancient Hebrew tradition of government under the law which influenced all of Western political thought has here at last "returned home." Reinforced as this tradition was by Greek and Roman elements, it shaped the thought of Western

man, especially the common man, through his reading of the Bible, the challenges of the prophets, and ageless stories like that of Naboth's vineyard. In any case, the idea of the divine origin of all law was here surrounded with intense religious sanctions which were lacking in the resigned philosophical doctrine of the Stoics.

It is, therefore, justifiable when Jewish apologists for the new constitution claim that "in embodying in our constitution a Declaration of Fundamental Rights, we are not simply following the models of modern constitutions, but are renewing ancient Hebrew traditions" (Leo Kohn). Not only is this true,—indeed the progenitors of modern constitutionalism, the Puritans of Cromwell's revolution, liked to fancy themselves the lost tribe of Israel,—but one can go a step further and link it to the Jewish tradition of "God's anointed," a "holy people" who will establish a rule of universal justice. The moral and political traditions of the Jewish people have proved not only of enduring strength, but (to quote again) are rooted "in the monotheistic conception of the Godhead, invisible, omnipotent, one and indivisible, the embodiment of absolute justice, the ruler of the universe, the father of man." Judaism "aimed not merely at individual perfection, but at the shaping of a social order." Moreover, as the Talmud explains, God created the law before he created the world. If these elements in the Jewish tradition are taken in their keen, normative meaning, they suggest that "Judaism is a design for framing the life of a community in accordance with the dictates of a higher order." The deep devotion which has gone into the winning of international recognition of Eretz Israel may serve to give the general "declaration of rights" a fuller realization under this constitution than it has yet received under constitutions which merely echoed this ancient Hebrew creed of a government of law and not of men.

(c) The pattern of the constitution is clear and simple. It consists of three major divisions, embodying the basic problems (arts. 1-11, 75, 77), the bill of rights and their judicial protection (arts. 12-25, 76) and the organization of the government (arts. 26-74). The latter is subdivided into the legislative, executive and judicial power. It is the constitution of an highly centralized, parliamentary, democratic republic. It compares very favorably, in its simplicity and comprehensibility with quite a few of the post-war constitutions; it closely resembles but is a definite improvement upon the constitution of the Irish Free State. At the center of the governmental scheme stands the law-making power;

it should be possible to legislate with dispatch and effectiveness under it. There is no mention of political parties, but presumably the parties, already well-established under the past order of things (the mandate), will continue to function along their fixed lines. It is important to bear in mind that the Israel parties, while numerous, —after a recent consolidation there were still 9 in the field,—are fairly stable; indeed the present coalition of Mapai and Mapam may be expected to continue to rule the country for many years, unless Mapam decides to go into opposition. The constitutional pattern may be said to be very well adapted to this political reality.

#### IV

THE basic positions which the Constitution seeks to settle are those vitally affecting any constitutional government. Israel is defined as a sovereign, independent, democratic Republic (art. 2), and as designed to be the National Home of the Jewish People (art. 3). The latter provision, —a most natural one in light of the new state's historic origin and antecedents in Zionism's long struggle for such a home,—is probably unique in the annals of modern constitutionalism. Each is, of course, the national home of the particular people, but I know of no constitution that expressly so provides. From this provision flows the further statement that every Jew who desires to settle within its territory shall be admitted. This statement highlights the central core of the new state's destiny, of course. It was dramatically put by David Ben Gurion immediately after the UN decision (Dec. 3, 1947—see *Jewish Frontier*, Feb. 1948, p. 17) when he said: "The new state lacks one thing—an essential thing—which is serious above all: it lacks *Jews* . . ." In view of the religious foundations of the quest for the homeland, Israel will become (or rather remain) a matter of deep concern to all Jews everywhere. The constitution must take account of this destiny.

As a counterpart to these provisions, the constitution establishes a reign of complete equality before the law of all persons and complete equality of civic and political rights of all citizens. No discrimination of *any kind* is permitted, be it on grounds of race, religion, language or sex. While these provisions were foreshadowed in the UN resolution, it is obvious that the ardent democratic spirit of the men and women who built up the Jewish homeland would have insisted on such equalitarian principles, anyhow,—indeed Jewry was on record as in favor of them. It is unfortunate that an element of constraint on this score should have been introduced by the United Nations when it was known that the Jews favored

such equality anyhow. How comparable principles are to be enforced in the Arab part of Palestine is another matter, pregnant with trouble for the future. Among the citizens are included all those Jews who were resident in those parts of Palestine assigned to the Arabs by the UN resolution.

There follow provisions, in articles 8-10, concerning Israel's natural resources, more especially water and soil, and the antiquities. The basic control over these parts of the national wealth is vested in the state which is being authorized and required to enact legislation to carry out its responsibilities. It is obvious that such being the case, the state of Israel will have to engage immediately in a substantial amount of planning. But it does not come to this task unprepared; the Jewish Agency and its subsidiaries have for a long time been concerned with planning. Indeed, the entire program of developing all kinds of properties under the control of the Agency foreshadowed provisions of this character. In this as in other important fields of governmental activity the draft constitution makes a definite effort to preserve as much continuity as possible. Art. 77 therefore provides that the laws in force in the State of Israel at the time of the enactment of the constitution shall continue in force, unless in conflict with the constitution. This idea clearly shows that the State of Israel, proclaimed on May 14, 1948, is in existence now and precedes the making of the constitution. This way of putting it is at variance with American political thought, and in keeping with Continental European ideas. I should venture the guess that it is also at variance with the Jewish tradition referred to above which believes law to precede the world. Would it not follow that the law of the constitution precedes the world of the state?

Finally, the constitution fixes the principle of a peaceful foreign policy. The UN resolution had suggested that the constitution should include provisions for the settling of international disputes by peaceful means and to refrain from the threat or use of force. The draftsmen of the constitution have rightly argued that no one state can resolve upon particular methods for settling disputes, and have provided that Israel shall *seek* to do these things. The drafters chose the simple and comprehensive formula of the Kellogg-Briand Pact (1928). It is gratifying to find the young state thus dedicate itself to the cause of peace, just as similar provisions in the new German constitutions hold out hope for a better world. However, unlike the draft constitution for Germany, the constitution of Israel does not commit the new republic to surrender-



ing such parts of its sovereignty as might have to be given up in connection with Israel's joining an international organization. In view of the explicit commitment to sovereignty in the second article, one wonders whether the drafters of the constitution wish to make Israel's participation in existing or future international bodies dependent upon a constitutional amendment. One might similarly wish that the provision regarding the relation of international and municipal law might be more strictly defined. As the draft stands, it suggests a legal situation similar to that under the Weimar Constitution, and the Irish Constitution of 1937. While it may be desirable for a great power to define "generally recognized" rules of international law as those rules which have been recognized by the state in question, it seems arguable for a small state to do so and advisable to find some more "international" criteria. There is a vast body of existing international law which the state of Israel will have to "recognize" explicitly under the present formula. Something like "recognized by three-fourths of the members of the United Nations" would seem a more "internationalist" solution.

## V

The bill of rights embodied in articles 12-25 reflects the experience of the last thirty years. While the fundamental rights as defined include the traditional freedoms of a person from arbitrary governmental interference, the freedom of expression, like the freedom of speech, are not extended to those utterances and publications "which are libellous, slanderous or obscene, or which are designed to stir up racial and religious hatred." Likewise, the freedom of expression may not be claimed by persons who advocate the suppression of human rights, or of the democratic system of government. Rules of this kind are turning up in some new European constitutions; they flow directly from the experience of such abuses as Hitler made of the constitutional freedoms of the Weimar Republic. It should be borne in mind, however, that such provisions are a double-edged sword, and may easily lead to the suppression of movements which are inconvenient to the government in power. The courts of Israel will have to display considerable wisdom in developing these constitutional principles into sound law.

As previously mentioned, the recognition of fundamental rights in the constitution of Israel is of great symbolic significance for the modern world. For the idea of such rights has one of its strongest roots in the tradition of ancient Hebrew political thought. When the constitution

expressly states that "future legislation in Israel shall be guided by the basic principles of Jewish law," it is extending what the fundamental rights have already established: the link between the old and the new. Space does not permit me to comment in detail upon the various rights; suffice it to note here that the bill is comprehensive without losing itself in irrelevant detail, like the Bavarian Constitution which provides for the right to enjoy nature and take walks in the woods. The only right clearly lacking, in comparison with the American constitutional rights, is that of bearing arms. It is a right which has become rather obsolete in the age of the tank and the airplane.

No bill of rights, however drawn, is worth the paper it is written on, if it is not backed by two real forces: (a) the public sentiment of which Rousseau wrote so dramatically when he called it "the real constitution which is engraved upon the hearts of the citizens," and (b) the interpretation of the constitution by courts of law which protects it against the natural tendency of executive and legislative bodies to transgress its limits. It is of the very greatest moment that the draft constitution thus breaks with the European tradition of the absolutist state which continues to prevail in the form of a parliamentary omnipotence restrained by little more than public opinion in England, France and other countries. This restraint of public opinion tends to falter at the very time when such constitutional safeguards are most needed. The arguments against such judicial review and interpretation are largely derived from the fact that the US constitution is very difficult to amend, so that much time elapses before it is altered. The draft constitution avoids this difficulty in the opinion of its authors by making the amending process quite easy, entrusting it to a 2/3 majority of the legislature, acting in two successive sessions, not less than six months apart (art. 75). Whether it is actually easy to secure a qualified majority of this size under a multi-party system may, however, be doubted. Nor is it desirable that the constitution be continually altered. A certain amount of adaptation through interpretation and usage is more flexible in the end than formal amending.

## VI

THE organization of the government which takes up most of the rest of the draft constitution is divided into provisions regarding the legislative, the executive and the judicial power. The pattern is that of a highly centralized, parliamentary democracy of the French type. It

seems rather unfortunate that the United Nations should have stipulated this pattern; it is quite difficult to understand why they should have concerned themselves with this purely internal aspect of the new state; it is justifiable to ask to what extent the constituent assembly should consider itself bound by these terms of the UN resolution and the draft. Perhaps the Jewish people want once more to experiment with the one form of democracy that has demonstrably failed to work: a combination of proportional representation (with its inevitably large number of parties) and of a government depending upon the resulting multi-party legislature for continuance in office. Since there are rather powerful arguments in favor of proportional representation to be derived from Israel's sharply defined ideological and religious divisions, it would seem highly desirable for the assembly to consider the advisability of discarding orthodox parliamentary "responsibility" which makes the cabinet depend on the whim of the legislative coalitions, and substituting for it some scheme of making the executive term of office independent of parliamentary pleasure. The constitution opts for a president elected for five years by the legislature, to produce a semblance of stability. Conceivably this arrangement will serve to balance the instability of the relations between the Chamber of Deputies and the Executive Council. But French experience makes one doubtful. It would seem more sensible to merge this office with that of Prime Minister, thereby making the latter, as well as the Council serving under him, more stable. Israel is going to be confronted with a great many difficult problems; if the young republic could adopt the Swiss method of letting the executive authorities propose legislation, while the legislative authorities dispose of it, it might greatly assist it in reaching a secure haven ere too long.

There are really three types of successful democratic organization, and one which is markedly unsuccessful. The first is the British type of parliamentary democracy, closely tied in with deep-rooted traditions of the British people at home and overseas, but also successfully copied in the Low Countries, and in Scandinavia. There is the American type, rather unsuccessfully imitated in Latin America, which places an independently and popularly elected executive leader at the head facing the legislative bodies, known as presidential democracy. There is thirdly the Swiss type with no real imitators, but highly successful in its native setting which places legislative and executive establishment on an even level, each supreme in its respective sphere. The

decidedly unsuccessful type of democracy is that typified by the French Republic, but also attempted in Weimar Germany and various succession states. I believe that the constituent assembly would be fully justified in the light of historical experience to reject this feature of the UN resolution; they are being asked to do so on decidedly less important matters. The matter is of the greatest urgency, since the success or failure of the homeland may depend upon it.

In respect to several controversial issues which the UN resolution left open, the drafters of the document showed wisdom, among these the decision to have only one chamber instead of two, the decision to establish the courts as a coequal power and to differentiate between a High and a Supreme Court, and the decision to exclude civil servants from the legislature. The Continental European practice of not only permitting, but encouraging this trend is likely to entrench the bureaucracy among those who should control it,—a most unfortunate pattern which American and British military government are fighting hard to eliminate from the German scene. The old-fashioned arguments about two chambers are hardly applicable under twentieth century conditions; a second chamber really is justified only in federal states which need a chamber to represent the component units.

## VII

All in all, the draft constitution represents a splendid beginning and one which should offer an excellent basis for the work of the constituent assembly. Present anticipation is that the assembly will be dominated by Mapai and Mapam. If that proves correct, the constitution may be accepted largely as it stands. Perhaps, if the dominant role of parliament must be preserved, from the standpoint of these two Labor Parties, they will decide to throw out proportional representation. Such a move would, however, probably be misinterpreted as being directed against the minorities. If the enthusiasm and devotion the Jews of Palestine have brought to the task of reconstruction and development of the ancient homeland attaches itself to making the proposed constitution a reality nurtured and permeated by the spirit of the prophets, as the preamble suggests, it promises to become the framework of a model state. As such it may help to resolve the cleavage between East and West, between capitalism and communism, by demonstrating the viability of social democracy and its faith in the dignity of man and the sanctity of human life.

# Yad Mordecai

*Letter From Israel*

by Marie Syrkin

YAD MORDECAI, a kibbutz near Gaza named after the hero of the Warsaw Ghetto, Mordecai Anilewitz, was occupied by the Egyptians for nearly five months. It is one of the few settlements in Israel which was actually in the hands of the invaders and its fate is a good indication of what would have been in store for the rest of the country if the Israeli forces had been unable to repulse the attackers.

There is only one bright spot to be seen in the settlement. Amid the frightening desolation of charred timber and scorched fields, one stumbles unexpectedly on a patch of color—a heap of labels for canned fruits and vegetables which lie in a corner of what was once Yad Mordecai's small preserves factory. Before their flight, the Egyptians had made sure to empty a case of labels that had escaped destruction, and the red, green and yellow papers illustrated with purple plums, curling spinach, and ripe, full tomatoes, provide an unexpectedly gay touch.

Outside of the labels, just about nothing remains. I have visited various settlements destroyed by Egyptian, Iraqi, Syrian, or Transjordan shells, but nowhere have I seen as haunting a desolation as in Yad Mordecai. There are a few worse places, like Beth Eshel, where nothing at all remains above ground. In Yad Mordecai just enough of the buildings still stand to enable you to reconstruct the whole. A caved-in roof, a piece of wall, a pile of plaster, and you can visualize a cottage. The skeletons are everywhere.

It is harder to imagine the work-shops, barns, or poultry-run. These faced south and bore the chief brunt of the Egyptian attack. Only a few sticks remain of the canning factory, but there you have the labels blooming in the debris till the next rains.

Not only physical devastation accounts for the gloom of Yad Mordecai. Negba, the settlement a little farther north, was also almost totally razed, but amid its ruins one senses the immense elation of a triumphant last stand. Negba, having its road north to Tel Aviv free, was able to hold out in underground bunkers and ditches from the time of the original attack on May 15 till the Egyptians were finally driven back by the Israeli army in November.

The final entry made in a diary kept by the defenders of Yad Mordecai explains their tragedy: "When we saw our own people being killed

in the fighting, we did not weep. But when we parted from our settlement, tears stood in every eye. The best of our strength and energies lay buried there. We had made it a radiant village, which cast its splendor over the desolate wastes. We had stood out as long as we could. We had given the best we had. And now, as we were leaving, we vowed that we would return one day to rebuild our settlement, now drenched with the blood of its dearest sons."

THE diary kept by one of the settlers gives a circumstantial account of the five-day siege, from May 18 to May 23. When one visits the settlement and sees the closeness of the Egyptian lines as well as the exposed position of the settlement one cannot understand how the kibbutz was able to hold out even a day. At the beginning of the Arab invasion, Yad Mordecai had one machine-gun, rifles, and home-made grenades. Of about 300 settlers, only some 100 men and women were capable of fighting. The rest, consisting of children, the sick, and the old, were evacuated when it became apparent that the Egyptians were planning a full-scale attack with airplanes and tanks.

A force of 1500 Egyptians equipped with heavy artillery advancing from Gaza seized the hills dominating the settlement and began to shell the cottages. Egyptian planes swooped overhead dropping incendiaries. During the first hours the settlers, under the illusion that they could save their newly harvested crop and their agricultural machinery, tried to put out the blaze. But they soon realized the uselessness of the attempt and concentrated on trying to hold out till "reinforcements" might come. 2500 shells struck Yad Mordecai during the first 24 hours. The enemy obviously expected to reduce the settlement at once by bombardment.

The entry for May 19 mentions the casualties: Abraham "with his smiling face," Moshe who had dedicated himself to the settlement "heart and soul," Isaac, "the unfailing optimist," and Mondek, who had been in Stalingrad . . . "One moment Mondek was standing in the trench and telling his friends that this was fiercer than any attack he had experienced in Russia, and the next moment a shell had struck him."

The water-tower was hit; the defense posts were demolished; the barn went up in flames, and the cows lay motionless: "We looked on helplessly. What could we do against the big guns?"



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What was the use of our miserable, primitive weapons, which were mere toys in the face of the enemy's heavy artillery?"

Though water and electricity failed on the second day, the settlers continued to defend the settlement. For three more days the struggle went on; the Egyptians advanced to the gate of the settlement with tanks and were driven back with hand-grenades. The settlers in the various ditches and trenches were unable to raise their heads because of the constant shelling. Contact between the various defense posts could only be maintained by girls who acted as messengers between the positions and exposed themselves freely to fire.

A nearby settlement sent thirty men. A Palmakh group of ten managed to break through, but the defense became increasingly hopeless. The settlement was completely cut off and prospects of reinforcements were non-existent. Every settlement in the Negev was enduring similar attacks by the Egyptian army and air-force.

On the fifth day, after another tank attack, the decision to evacuate the settlement had to be taken. "Our people were completely prostrated. They were by this time incapable of further action. Our ammunition was gone. We had no grenades left. The best of our fighters had fallen . . . our position was clear. We had to choose between falling into the enemy's hands or the risk of evacuating the settlement and of saving our wounded, women, youngsters, and the few fighters who were left."

Rather than submit to capture by the Egyptians, the evacuation took place during the night of May 23. The Egyptians, under the impression that the settlers were still lying in their trenches, continued shelling for a full day before occupying the settlement.

NEARLY five months were to pass before Israeli convoys finally broke through to the beleaguered settlements in the south. When word spread on November 5 that Yad Mordecai had been liberated, members of the collective scattered throughout the country began to stream toward the settlement. By nightfall some sixty young men and women had gathered; the military did not let them enter till the next morning because of the danger of booby-traps which the Egyptians had thoughtfully left behind.

When I visited the settlement a few days later, those who had returned were removing debris and trying to discover what parts of the ruins could be utilized. They were attempting to estimate how long it would be before enough cot-

tages could be rebuilt so that the children could come back. It was going to be a hard job, harder than beginning from scratch.

One of the cottages facing north, which had only been partially destroyed, had served as an Egyptian headquarters. Now it was the one place in the kibbutz where it was possible to find a table and chairs. On the walls the Egyptians had made crude crayon sketches of heroic Egyptian officers and caricatures of Jews in the best Streicher tradition. Nobody had bothered as yet to remove these vestiges.

The young people that we saw looked grim and tired. We couldn't figure out where they would sleep or how they would eat, but nobody was inclined to probe further. One American journalist, anxious for human interest material, asked: "This place must have such tragic memories for you. Would you not rather rebuild somewhere else?"

The girl who had shown us the diary and told us the story of Yad Mordecai's struggle, answered with the unashamed eloquence which one frequently encounters among practicing idealists: "Each comrade who fell left a message urging us to rebuild Yad Mordecai. We are now tied to this ground by bonds of blood."

The journalist was anxious for more: "Aren't you discouraged?" he inquired.

This time she smiled: "If you look at it from the point of view of a person who had to lie in the ditch, unable to raise his head, and now he can hear our planes instead of the Egyptians', you feel pretty good."

We made a last tour of the settlement. A group of girl scouts was on the hill near the watch-tower, looking at the long stretches of bare fields in every direction. They were being shown the living history of their people. The havoc on every side shocked them, but their guide, a member of the settlement, said with dignity:

"We ask only one thing; that you help us to build more settlements in this region so that when we have built Yad Mordecai again, we will not be so alone."

As we left, everybody instinctively went back to the site of the small preserves factory, and picked up a label for a souvenir. Mine was a plum label carrying under the Hebrew legend the quaint English explanation: "Ready for use only to be chilled." In addition, I received a parting gift—a copy of the diary of the siege, illustrated with the pictures of the dead, among them the smiling Abraham, and Isaac, "the un-failing optimist."

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# A Study In Contrast

by James G. Heller

**I**N READING one comes across countless impressions, facets which our world turns toward the eye as it rotates under the beam of the moment. The impulse to share them with others is constant. Such an impression came to me not long ago, when I chanced to peruse in rapid succession the collected letters of Rainer Maria Rilke, and the two volumes of the *Journal* of André Gide which thus far have appeared in English. Both contain passing reference to Jews, the former in two letters, the latter in a number of incidental passages, of which I shall reproduce but one.

RILKE was a German poet, though born in Czechoslovakia. He died but twenty-two years ago. One of the rarest spirits born upon earth, his temperament was compounded of a deep aesthetic awareness of the pageant of the external world, and of a mystic response to the palimpsest of life and death. In the light of this it is perhaps not to be wondered at that he should appear to have had a quick and unprejudiced judgment upon Jews and Judaism. The two letters containing the evidence of this are, first, one directed to Ilse Blumenthal-Weiss, written from the Château de Muzot, where he completed his greatest work, the *Duino Elegies*.<sup>\*</sup> It is dated December 28, 1921. Its relevant sections read:

"Belief!—there is no such thing, I almost said. There is only—love. The forcing of the heart to hold this and that for true, which we commonly call belief, has no sense. First one has to find God somewhere, experience him as so infinitely, so utterly, so enormously present; then *whatever* one feels toward him—be it fear, be it astonishment, be it breathlessness, be it after all *love*—it hardly matters any more. But for belief, that compulsion to God, there is no room where one has begun with the discovery of God, in which there is then no stopping any more, at whatever point one may have begun.—And you, as a Jewess, with so much most spontaneous experience of God in your blood, should not have to bother about a 'belief.' But simply *feel* his presence in yours: and where He, Jehovah, wanted to be *feared*—it was after all only because in many instances there was no other means of contact between man and God except just fear. And fear before God is only, so to speak, the *rind* of a condition, the inside of which does *not* taste

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<sup>\*</sup> W. W. Norton Co., 1939, \$3.00.

of fear, but can ripen to the most ineffable namelessness and sweetness for him who loses himself within it. You have, do not forget, one of the greatest gods of the universe in your descent, a God to whom one cannot just be converted at any time as to that Christian God, but a God to whom one *belongs*, through one's people, because from time immemorial he made one and formed one in one's forefathers, so that every Jew has been established in Him (and in the one whom none may desire to name), ineradicably planted in Him, with the root of his tongue!

"I have an indescribable confidence in those peoples that have *not* come to God through belief but have experienced God through their own race, in their own stock. Like the Jews, the Arabs, to a certain degree the orthodox Russians—and then, in another way, the peoples of the East and of ancient Mexico. To them God is origin, and therefore future as well. To the others he is something deduced, something away from which and toward which they strive as really strangers or as people who have grown estranged—and so they are always needing the intercessor, the mediator, him who translates their blood, the idiom of their blood into the language of godhead. . . ."

(Italics all Rilke's)

The second letter, from the same place, under date of April 25, 1922, is again directed to Ilse Blumenthal-Weiss:

". . . Here I might link up with still another theme touched upon in your letter before last: that of the destiny of the Jew. *Beer-Hofmann* (while so many Jewish people seem to represent this hard destiny only in its splits and evasive twists) was to me always an example of its greatness and dignity, of which even in the long and afflicted exile nothing essential had to be surrendered. You know from one of my earlier letters (the one about 'faith') how very favored the Jew, together with the Arab and the orthodox Russian, to point no farther into the Orient, seems to me by his innate unity of nationality and religion, which insures him an over and over again manifest head-start. That he had lost the ground beneath him and had to maintain himself on a bit of borrowed earth has its good and its bad aspects; apart from a few great exceptions, he has had to misuse his advantages in order to survive in the contested and foundationless,—he has for the most part misused himself and others. With a cunning to which self-preservation trained him, he transformed his being nowhere attached from a misfortune into a superiority, and where he happened to misuse this dearly bought superiority pettily, greedily and inimically, where—involuntarily—he revenges himself, there he has become noxious, an intruder, a disintegrator. But where the same process, the same survival wrung from destiny has been consummated in a person *grandly* determined, there, out of the same inexorabilities, has arisen that glory of which *Spinoza* would be a famous example. The mobile and transplantable character of the inner center, its independence (but at the same time rootlessness, unless consciousness leads downward to the root in God); the truly *transportable* spirit came into the world through the destiny of the Jew: an unheard-of danger and an unheard-of freedom of movement. And according as one stresses one side or the other of this Jewish



resource, one will have to fear or extol it; with all of which the fact remains that what has been effected through it is ultimately indispensable to all of us, not to be thought away and not to be wished away. Perhaps this ferment, when it has acted long enough, must be again withdrawn and collected in the vessel most its own. The Zionist consciousness stemming from a purely Jewish impulse would be a beginning for this presumably imperative separating out. This reacquisition of the ancient soil once theirs, this new rootedness, must then be conceived and interpreted literally as well as symbolically. If, as is probable, we have known the Jewish people only in its distortions, in its perplexity, in its deflected and sometimes oblique obstinacy, and if we gauge its vigor by its survival, we are at first frightened at imagining the strength it would bring forth were it established, sanctioned, favored! The growth of these people so fruitful even in their uprootedness would then attain an unrestrainable fruitfulness in God, the continuation of that history of passionate and weighty harvests which the Old Testament, wherever we open it, makes for us an event, a climate. . . ."

One could pause here, and comment in lengthy detail upon the multitude of insights and intuitions these two letters contain. Most striking is their utter freedom from the usual distortion, their capacity to approach another people, another faith, eagerly and lovingly. They strike, as Rilke was wont throughout his life, to the heart of the matter: the deep identity of people and faith, the immediacy of the Jewish God-concept, which has its roots not in reason, but in experience; the realizations and frustrations that homelessness has entailed for the Jewish people, and finally the rich potentialities of Zionism in relation to the miracle of Jewish survival in dispersion and Jewish concentration once again in Israel. How much of intuitive understanding and penetration there is in these letters! One draws from them, through these alien poet-eyes, a new consciousness of our own heritage, of our own gestating future!

IN SHARPEST contrast is the first entry in Gide's *Journal*, in the second volume (that is, in its English edition.)\* In many earlier passages one feels Gide's deep antipathy toward Jews, his dislike of them, his inability to understand them. He does not attempt to conceal it. It is as open and frank as all his thoughts and impressions, concerning others and concerning himself. But the series of vignettes come to its climax in this:

(January 24, 1914) "Yesterday I had left Auteuil early in the morning to stop at the *Mercurie*, at the Theater, at the Review. I planned to lunch with Paul A. Laurens and, not having found him in his studio, was walking up and down in front of 126 boulevard Montparnasse. Instead of Paul, Léon Blum came along. To avoid an invitation to lunch with M., I thought it expedient to invite him at once. I was not shaved; after a sleepless night, or rather one in which I was constantly awakened by the sick cat, I had got up with a bad headache. I felt ugly, dull, and stupid.

\* Knopf, 1948, Vol. I—\$5.00, Vol. II—\$6.00.

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and since Blum has the precise kind of mind that congeals mine at a distance and whose lucid brilliance keeps mine muscle-bound as it were and reduced to impotence, I said nothing during the whole meal that was not inane.

"I reflect tonight on Blum's character—in which I cannot fail to recognize nobility, generosity, and chivalry, even though when applied to him these words must be considerably distorted from their usual meaning—it seems to me that his apparent resolve always to show a preference for the Jew and to be interested always in him, that predisposition to recognize talent and even genius in him, comes first of all from the fact that a Jew is particularly sensitive to Jewish virtues. It comes above all from the fact that Blum considers the Jewish race as superior, as called upon to dominate after having been long dominated, and thinks it his duty to work toward its triumph with all his strength.

"Perhaps he glimpses the possible dominance of that race. Perhaps he glimpses in the coming to power of that race the solution of many social and political problems. A time will come, he thinks, that will be the age of the Jew; and right now it is important to recognize and establish his superiority in all categories, in all domains, in all the divisions of art, of knowledge, and of industry. He has a marvelously organized, organizing, clear, and classifying intelligence, which ten years later would be capable of finding each idea exactly in the place where his reasoning had put it, just as you find an object again in a cupboard. Although he is sensitive to poetry, he has the most antipoetic brain that I know. I believe also that in spite of his value he overestimates himself somewhat. His weakness lies in letting this be seen. He likes to give himself importance; he wants to be the first to have recognized the value of this or that one; speaking of little Franck, he says: 'I must have sent him to you some time ago'; and speaking of Claudel: 'That was the time when Schwob and I were among the very few to admire him.' He also says: 'T. has only to mention my name to the fencing master X., who will give him some help.' He always talks to you as a protector. At a dress-rehearsal, when he meets you by chance in a theatre-lobby, he puts his arm around your waist, neck, or shoulders and, even if you have not seen him in a year, makes everyone think that he saw you yesterday and that he is the most intimate friend you have in the world.

"But why should I speak here of shortcomings? It is enough for me that the virtues of the Jewish race are not French virtues; and even if the French were less intelligent, less long-suffering, less virtuous in all regards than Jews, it is still true that what they have to say can be said only by them, and the contribution of Jewish qualities to literature (where nothing matters but what is personal) is less likely to provide new elements (that is, an enrichment) than it is to interrupt the slow explanation of a race and to falsify seriously, intolerably even, its meaning.

"It is absurd, it is even dangerous to attempt to deny the good points of Jewish literature; but it is important to recognize that there is today in France a Jewish literature that is not French literature, that has its own virtues, its own meanings, and its own tendencies. What a wonderful job could be done and what a service could be rendered both to the Jews and to the French by anyone who would write a history of Jewish literature—a history that would not have to go back far in time, moreover, and with which I can see no disadvantage to fusing the history of Jewish literature of other countries, for it is always one and the same thing. This would clarify our ideas somewhat and would perhaps check certain hatreds that result from false classifications.

"There is still much more to be said on this subject. One would have to explain why, how, and as a result of what

economic and social reasons the Jews have been silent until the present. Why Jewish literature hardly goes back more than twenty years, or at most fifty. Why during these last fifty years its development has followed a triumphant progress. Had they suddenly become more intelligent? No, but before that they did not have the right to speak; perhaps they did not even have the desire to, for it is worth noting that of those who now speak, there is not one who does so through an imperious need to speak—I mean whose eventual aim is the word and the work, and not the effect of that word, its material or moral result. They speak with greater ease than we because they have fewer scruples. They speak louder than we because they have not our reasons for speaking often in an undertone, for respecting certain things.

"I do not deny, indeed, the great worth of certain Jewish works, for example the plays of Porto-Richo. But how much more naturally I should admire them if they did not come to us in translation! For what does it matter to me that the literature of my country should be enriched if it is so at the expense of its significance. It would be far better, whenever the Frenchman comes to lack sufficient strength, for him to disappear rather than to let an uncouth person play his part in his stead and in his name."

I trust that I am not doing Gide an injustice, when I discern in these paragraphs all the paraphernalia of Nazi hatred and Nazi perversion. Moreover, it must be remembered that they come from a man who hates and has fought Nazi repression, who built up for himself a consistent record of daring and of protest. They come, too, from a subtle man, one accustomed to look not at the obvious but at the hidden and often tortuous, one forever indulging in somewhat sickly self-analysis, one capable of astonishing inner change.

Yet through them speaks an instinctive hatred of the Jew, barely concealed beneath the urbane surface. Gide dislikes Blum's physical nearness. The latter's very virtues he finds irritating and distasteful. He tends at once to trace them from the individual to the "race." He ascribes to him thoughtlessly the same motives that underlay the forged *Protocols of Zion*. In his own well-tilled field of literature, the Jew is a trespasser. Those who believe in "integration" might pause and

consider this: that this man should reject so summarily as alien and corrosive all that Jews, in love of France and in devotion to its aesthetic aims, have striven to contribute to its anthology. There is for him an unbridgeable chasm between Jewish virtues and French, between the Jewish spirit and that of France. Perhaps most striking of all is the vast error in judgment into which his prejudice causes him to fall. This is not an ignorant man, nor an undiligent man. To read him is to be struck again and again by the immense area of reading he has traversed, his delving into exotic and remote fields of the creative intelligence. Yet, he has the temerity and the blindness to assert that Jewish literature goes back no "more than twenty years, or at most fifty." By this, patently, he does not mean the Jewish contribution to French literature. He asserts that Jews have been "silent until the present," that it is only their parasitic relation to France that now prompts them to graft themselves upon that noble oak. Jewish works in French are to him "translations," attempts to import into a foreign medium thoughts and style inappropriate to it, which can be conveyed with no more than the relative transference possible to the passage from one tongue, one system of life and thought, into another!

EACH of these, the poetic love and outreaching intuition of Rilke, and the startling ignorance and dislike of Gide, instructs us about ourselves. In varying measure we possess judgment upon our own life, its vicissitudes, its problems. But we see ourselves also through the reflection discernible in the pupils of other eyes. Love and hate are the magnetic poles by which we learn the shape and the magnitude of our planet. In this case, deeply enough considered, both move in the same easterly direction. Both testify to the strength that has enabled the Jew to survive in dispersion, to his difficulties of accommodation, and to the necessity of creative rebirth!

## B O O K S

### A Saga Is Continued

by Ludwig Lewisohn

IN "PRINCE OF THE GHETTO" (A. A. Knopf, 1948) Maurice Samuel continues the task which he began to execute so movingly and skillfully, with so much eloquence and

charm and tact in "The World of Sholem Aleichem." What precisely is that task? It is to reconstruct upon another level, in another tongue, for generations living in a different world,

a saga—the saga of the masters of classical Yiddish literature and of the perished life from which those masters sprang. The criticism that has, here and there, been addressed to Maurice Samuel by those close to the sources whence he drew, namely, that *bis* Peretz, Prince of the Ghetto, is not quite theirs, is a misdirected criticism. For he has re-created a vision, an interpretation, a saga, in the terms



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in which it can reach—in terms in which alone it can reach—the audience that is meant to hear it.

In this process of re-casting for other generations who necessarily hear with other ears, a good deal of Maurice Samuel the man and the style have gone into the finished product. But that is not only right and fitting, not only inevitable, but in accordance with a majestic tradition. Franz Rosenzweig used to tell his disciples that, if they could not accept the exclusive Mosaic authorship of the Torah, they were to say instead of Moshe Rabbenu Redactor Rabbenu, seeing that whoever cast *this* Torah in *this* form—he and none other is Rabbenu, our teacher. A more recent example is the recasting and retelling of the Hasidic evangels by Martin Buber. His sources are accessible to scholars. He, too, has been criticized on grounds of technical scholarship. Wrongly and in vain. For it is evident that he was called upon or, if one prefers, that in him the Jewish world-idea was sufficiently incarnate, to destine him to be the redactor or Rabbenu of that portion of Torah in the broader sense which is represented by the substance and expression of Hasidism.

I derive this idea of the Jewish aspect of the world-spirit and its incarnation from Yitzhak Loeb Peretz, that Prince of the Ghetto, with whom Mr. Samuel's volume deals. Samuel himself has very wisely and properly not included the non-imaginative writings of Peretz. But these exist and have their own importance. And in an essay on the causes of apostasy Peretz wrote: "Jewishness is the total Jewish reaction to the universe. Or, if one prefers: The world-idea seeks its incarnation in substance. The form in which it stamps itself upon the Jewish soul—that is Jewishness." Now there are individuals in every generation in whom that stamp of the world-spirit upon the Jewish soul which constitutes Jewishness is uncommonly deep and clear. These are they who feel the vocation to continue and to preserve Torah across the abysses of space and time and speech. Thus and only thus are the intentions and the execution of Mr. Samuel to be defined and judged.

It is profoundly to be hoped that he will continue in other volumes to preserve the classical literature of that Yiddish culture—that older Yiddish culture—which has perished. He has the supreme qualifications that have always gone with these tasks. Chief of these, assuming the foundation of knowledge and of Jewishness in the precise sense of Peretz, is mastery of the language in which any portion of

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the endangered Torah is to be preserved for aftertimes. Thus Martin Buber is a great German stylist. His achievement cannot, alas, be measured by the current English translation of his texts. And similarly Maurice Samuel is one of the pre-eminent English stylists of our time. If "Web of Lucifer," his recent novel, proved nothing else, it proved that fact once more up to the very hilt. And style is substance, if you consider deeply enough; the incarnation or, if one prefers, the artistic act is a single and indivisible act. Hence Maurice Samuel's power over the language in which he writes is—given the knowledge and the Jewishness—the proof of his calling, the evidence of his achievement.

It may seem that I have so far hardly spoken of the specific contents of "Prince of the Ghetto" or of the precise method employed or of the character of the selections. All these matters have been discussed by others and will be discussed again. I have tried to throw some light on the character and quality of Mr. Samuel's achievements in the two books on Sholem Aleichem and on Yal Peretz. Of the latter he gives us, with a single illuminating exception (the tale called "Stories") only the more or less symbolical tales of Hasidic life or of life according to the Hasidic vision of it, which are Peretz' special contribution to the myth (*mythos*) and meaning of Israel. Firmly and delicately he makes us see the deep, concrete significance of these tales, some of which, superficially regarded, may seem the mere products of an exuberant oriental fancy; he leads us to feel the meaning of that familiarity with which a legendary universe is treated, of which the most familiar example is the Heavenly Court of "Bontsche Schweig"; he persuades us to that complete act of what Coleridge calls "poetic faith" and which, in this manifestation of it, is at once transformed into a higher faith in the meaning and spirit and destiny of the Jewish people as these appear in the visions of Peretz.

I must not omit mention of the three final chapters in which Mr. Samuel speaks of classical Yiddish literature and its language and the world from which it came. These three chapters, especially that dealing with Yiddish as a language, are the quite masterly expressions of an imaginative philologist who knows that all words are words of life, and that a people's speech is symbol of its being and image of its character. Similar passages are scattered up and down the book, such as the extraordinarily illuminating one on the word, con-

cept and *act—to davven* (p. 206-207). Thus "Prince of the Ghetto" is at once a volume of high imagina-

tive literature, beautifully interpreted, and an achievement in brilliant and sagacious scholarship.

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## A BOOK AND ITS AUTHOR

THE BIRTH OF ISRAEL, by Jorge García Granados, Knopf. pp. 291.

DR. GARCIA GRANADOS' book follows Bartley Crum's *Behind the Silken Curtain* and Richard Crossman's *Palestine Mission* as the third report published in the past two years by a member of a Palestine inquiry commission. But *The Birth of Israel* has one outstanding advantage over both its notable predecessors: it can be read without melancholy afterthoughts. This is not a report of one of the many commissions that came and went. It is no chronicle of wasted effort, like that of the Anglo-American Inquiry Commission. What Dr. Jorge García Granados describes is the United Nations Special Committee on Palestine (UNSCOP) in action, the last, history-making Palestine commission. Beyond that, the book is the first covering the whole of the crucial period from the first special session of the UN General Assembly to the proclamation of the State of Israel.

The role destiny chose for the rebellious Guatemalan diplomat was also different from that of Bartley Crum and Richard Crossman, whose effectiveness was restricted to what could be done by critics of their own governments' actions. García Granados was not simply one of eleven members of UNSCOP, or one of fifty-six delegates to the UN General Assembly. From the moment he reluctantly joined UNSCOP to this very day, he has been the most consistent and effective advocate of the Partition solution in Palestine. The value to Israel of his championship of its cause can be rivalled only—in view of the uncertain policy of the United States and the British Dominions, the acceptance by Western Europe of the role of a British crown colony in the whole affair, and the drawbacks of Soviet-bloc advocacy for any cause it favors in the UN—by another South American, Professor Enrique Rodríguez Fabregat of Uruguay. Of the two, the latter is the more eminent intellectual, but García Granados is the more effective fighter. The strongly-marked personal-narrative character of this account (subtitled "The Drama As I Saw It") is, accordingly, quite in keeping with its subject, for without García Granados' contribution, both the UNSCOP report and the subsequent UN debates might have turned out substantially different. And if García Grana-

dos' own convictions were decisive in determining the position his country took, he was able to play the role he did thanks to the warm understanding of the great humanist who is President of Guatemala, and thanks to the natural sympathy of this little Central American nation for the Israeli liberation struggle.

The customary misunderstanding of Latin America may cause many a reader to wonder how a political leader of Guatemala came to serve as the advocate of Israel. Dr. García Granados very convincingly explains that, as the grandson of a Guatemalan hero and liberator, he was bound from the very beginning to be drawn toward the Israeli fight for independence. The fact that Guatemala has its own bone to pick with Britain over a part of its territory long occupied by the latter may unconsciously have helped to counteract any susceptibility to the arguments of British propagandists. The "testament" offered by García Granados on the jacket of his book is undoubtedly one of the handsomest condensed autobiographies ever written:

"I have always been a rebel. I pay no allegiance to any power. I am not a mason. I am not a communist . . . I do not belong to any political party, nor to unions, chambers of commerce, charitable organizations, or literary societies. Once I was an academician, but I resigned.—I hate nobody and love many . . . I have ideals in my life. I am willing to lend my help to any society, any party, any group, any individual—to anybody if his cause appears to me to be just.—I respect thought and I abhor violence and tyranny.—I have no complexities and I enjoy life: books, theaters, pictures, music, flowers, landscapes, food, wines, the lovely crowds in cities, and the intimate society of my family and a few congenial friends.—I have been in jail and in exile and I have suffered for things I believe in. I wanted my country to be free, and I have fought for a decent government there, respectful of human beings. I have struggled for other countries and for other peoples because I believe that mankind has a right to happiness and that all men have a duty to help their neighbors.—I do not revere hierarchies, and I speak as frankly to the powerful as to the meek.—Within the relativity of the human condition, I am happy.—It has been hard for me, feeble and solitary, to arrive where I am now. But I have been rewarded. I am a free man!"

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such as China and India, which fought so long for their own freedom, this "confession" may not impress everyone as sufficient explanation. But those who know that the author eleven years ago left wife, children, and a peaceful home to fight for the Spanish Republic will understand that the simple and unrhetoical bravery of this man must be taken seriously.

*The Birth of Israel* is a factual report. It describes the proceedings at three UN General Assembly sessions, where the Palestine question was considered, and it covers the course of the UNSCOP investigation leading to the Partition Plan. Without any effort at sensationalism—most of the "inside stories" had already been reported, in any case—it lays bare in systematic detail the web spun by British intrigue and United States indecision. One feels occasionally that the author is handicapped by the desire to avoid repeating Crum or Crossman. Thus, for example, the description of the DP camps lacks that intensity of feeling with which, notwithstanding his native vigor and combativeness, the author's unmistakably Latin American sensibility unquestionably led him to react to these scenes. This may also be caused by the fact that UNSCOP visited the DP camps only after its tour of Palestine, instead of beginning there, as the Anglo-American Inquiry Commission did. Moreover, the earlier Commission visited Germany in 1946, when the great tragedy still cast a long shadow. But there are other emotional peaks in this book: the story of the *Exodus*, 1947; the fatal vicious-circle of terrorism and repression. How much drama was compressed into that single year! A man of García Granados' vitality naturally grows most intense in his description of anything positive, and his account of Jewish pioneer outposts in the Negev is full of vibrant actuality in these very days.

This is no book of superlatives, nor is it the book of a philo-Semite. It is the report of a fighter for liberty and a zealot of justice. The conclusions to which men of this stamp must come are not surprising for Zionists. Crum, Crossman, García Granados—are a series of reactions of the humanist sensibility, of the unerring instinct for justice, and of the rebellion against conventional lies.

*The Birth of Israel* is a good book written by a first-rate man. It is not a historical work, but a document of history. It is, as Bartley Crum correctly says, a "must" book on Palestine.

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This book is an extraordinary combination of excellent photography and superlative journalism.

I. F. Stone has really done a brilliant job of compressing all the possible pertinent facts in a beautifully organized account of the backgrounds of Zionism and the political developments leading up to the present position of Israel. He is particularly acute on the subject of the psychological bases for Zionism in the modern world and their influence upon the quality and nature of the Zionist effort. In general, this outline of the development of Zionism is unusual in that it does not succumb to the temptations of burbling enthusiasm, but grounds itself instead in a factual concreteness of detail.

Stone's summary of the devious diplomatic moves involved in the various efforts to sabotage Zionism is particularly neat and polished. Some of his concluding sentences in this section are masterpieces of understatement.

When he deals with the facts of the situation in Israel today he draws on his own experiences in order to explain the attitude of the Jews in Israel toward the D.P.'s. His gift for sharp-eyed description and the embodiment of human detail makes his account of the founding of Israel an intensely-lived and moving experience.

In general, the most valuable portion of this historical summary is probably to be found in Stone's chronological account of the progress of the war against Israel up until the end of September. This really constitutes the only clear and organized narrative of the major battles of the war to be found in English at the present moment. It shows a firm grasp of the total military position of Israel, together with a searching sense of the concrete human situation. The whole of the Israeli strategy is made perfectly logical and clear. This section is also notable for its telling use of personal portraits and brilliant thumbnail sketches of the major personalities involved.

The photographs have been made and selected with care and are significant for the general air of free activity emanating from them. The faces and figures transfixed there are those of an active, determined people.

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INSTEAD OF ARMS by Count Folke Bernadotte, Bonniers, pp. 227, \$3.00

**T**HIS LITTLE BOOKLET, written by Count Folke Bernadotte, would not receive much attention if the author had not been prominent in the news through his role as UN Mediator in the Jewish-Arab conflict. Bernadotte's autobiographical notes are by no means a literary work, but they are of interest in attempting to define his political physiognomy.

Reading *Instead of Arms*, I recalled an incident in the year 1933, when I was Director of the Democratic Relief Committee in Prague, and a Dutch Quaker by the name of Gildemeister came to see me. The purpose of his visit was to ask me for introductions to important people in Prague, because he wanted to help German right wing leaders, who had been arrested at this time for their activities against the Czechoslovak Republic. He could not understand it when I refused to comply with his request. One year later a Socialist friend of mine informed me that the same Gildemeister was most helpful in the case of his brother, who had been arrested and sent to a German concentration camp because he was a Jew and a Socialist. Bernadotte's repeated assertions that he wants to serve humanity regardless of the various "isms" reminded me of this man, Gildemeister, for it reflects the same mentality.

Bernadotte's book reveals that he was a conservative, but very far, for example, from sympathizing with the Nazis, since he expresses very often in his book his disgust for them. He is also critical of the German people: especially the German compulsion "to obey" is repulsive to him. He weighs the fact (p. 73ff) that the Germans did not resist totalitarianism and he points out that contrary to the situation in Germany, "there were marvelous examples of the will to sacrifice in order to fight" in other countries as Denmark, Norway, France, etc. We certainly can agree with the description of the German character, when Bernadotte says, "If a German does not find somebody above him, he becomes uncertain and confused." His story that in November 1933 a German in command of a fire engine refused to extinguish a fire in the Swedish Legation because he had no orders to do so is a striking and tragi-comic illustration of that German characteristic. His attitude towards the German people, however, is quite different. His report

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is proof of his endeavors to help the German people during the war.

From Bernadotte's book we learn that he harbors great sympathies towards the British. This is natural enough, when we remember how much England has influenced Swedish economy and Swedish culture. But Bernadotte acknowledged also the charm and vigor of Mme. Kollontay, (Soviet Ambassador to Sweden), with whom he was in constant contact in his endeavor to get permission to visit prisoner of war camps in Russia. When the war started in September 1939, we find Bernadotte in New York, trying to help the Finns, under attack by the Russians. He fails completely in this effort, and then a period of long and devoted service as the leading representative of the Swedish Red Cross begins. He helps to arrange the exchange of prisoners of war and at least twice his endeavors succeed. After the war he is instrumental in bringing aid to German children. His adventure with Himmler, which saved some 10,000 Jews, and led to his serving as mediator between one faction of the deteriorating Nazi-Reich and the Allies, he has already told in his book, *Behind the Curtain*.

His report *Instead of Arms* shows that Bernadotte was imbued with the desire to serve the human race, and one of his guiding principles he expressed in the words of the Bible "Judge not that ye be not judged." As a representative of the Swedish Red Cross, he tried to be impartial. He was a conservative, influenced by the Quaker spirit. Coming from a royal ancestry, he abjured the ease of the palace and plunged into the struggle of life and tried to make his contribution. His motives are clear in his book. History alone will judge his deeds.

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# DIGEST OF THE MONTH

## A Word of Warning

**T**HE VISITOR to most of the areas reoccupied by the Israeli army, finds himself confronted with facts and evidences which could at best be considered as undesirable. Something of these matters has been hinted at in the Hebrew press, but not enough has been said about them. Young recruits to our army who have been shocked at these phenomena have remarked to the writer that the press has not fulfilled its function as it should have by not condemning certain acts which were by no means necessary to the prosecution of the war, but have actually been harmful. It is both surprising and regrettable that the military and civilian authorities have not exerted all of their influence toward preventing, or at the very least, toward limiting actions which are sometimes excused as "inevitable" in the process of military operations.

The reaction we get from both soldiers and civilians, whenever this matter is brought up, is that these affairs must not be noised about, for if the defeated party were in the position of the victors they would leave neither trace nor remnant of Jewish property and would destroy everything they could lay their hands on. This cannot be accepted as a justification. Their disgraceful defeat itself is proof that we would do our best to remove ourselves as far as possible from their methods and modes of behavior. Moral responsibility is the only true sign of heroism (and this was sufficiently shown by the Israeli army). We should not fear lest a decent, human attitude on our part (which the upholders of the "strong arm" chose to call "sentimental and appeasing" will be interpreted as weakness on our part. Once the actual power is in the hands of the victors there is no room whatever for any such assumption. We must not stain the glory of our victory by acts of plunder, or actions such as occurred in certain reoccupied areas toward the end of the fighting, when only non-combatant civilians who showed no sign of resistance whatever—were left.

It has not always been possible to hold the local commanders responsible for acts perpetrated by thieves and robbers and persons lacking in conscience, or by degenerates in some shape or form. Some of these are expiating their crimes in prison. Reason demands, however, that anyone respons-

ible for acts of this kind in the course of fulfilling his official duties (and cases of this kind were rare) should be called to account for his actions.

Even if we omit humanitarian and moral reasons for our condemnation, political reasons would suffice. We still have many enemies abroad, both in Europe and in America, and any unworthy act is recorded and used as ammunition against us. We have still another reason: the fact that our leaders and statesmen stress our desire to live in peace with the Arab world around us. Acts of this kind create obstacles in our path. It is possible to defeat and to repel the invader by means of the sword, but it is not possible to force peaceful relations upon our neighbors by this means. We are not interested in accentuating the hostility between Ishmael and Israel to the point of crystallizing an historic hatred.

It is our deeds that will make us friends rather than enemies, this proverb should be remembered when we consider the thousands of Arabs remaining within our territory who had no desire to make war, but who were forced to do so by corrupt leaders (and their English allies). These people must be helped, and everything must be done, insofar as is possible at this critical time, to restore them to a normal way of life.

This does not hold true for the masses of Arab refugees, who constitute a problem in themselves, but rather for the 50,000 living in the various towns and villages of Israel. Our authorities must make it possible for the Arab owners of orange-groves and farms to cultivate their land and thus to create work for the unemployed. They are citizens of Israel, and it is our duty to treat them as citizens endowed with concrete equal rights.

Above all, it is necessary that we retain an attitude of farsightedness and that we do not forget that Israel is surrounded by tens of millions of Arabs (and other Moslem countries, such as Pakistan, for example, should not be disregarded). It is true that our Arab neighbors have shown both political and military weakness, but there is a law of evolution which is valid for the Arab states as well. Despite the conflicts between them we have seen that they are capable of uniting against us. The most obvious conclusion we can draw is that we must avoid any acts which would jus-

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tify in any degree the poisonous prop-  
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 than one country. Now, more than  
 ever, as we are in the position of vic-  
 tors we can destroy the basis of the  
 propaganda disseminated against us in  
 the Arab world over a period of years  
 by living proof of our belief in "one  
 law alike for the alien and the citizen,"  
 both in theory and in practice.

(Davar.)—MENAHEM KOPELIUK

### *Egypt's Battle for the Negev*

**T**HE BATTLE in the Negev con-  
 stituted an additional lesson for  
 the Egyptian army and for its boast-  
 ful commanders. It is true that the  
 numerous and heavy cannons in the  
 hands of the Egyptians carry out their  
 functions blindly when they are put  
 into use, but the Egyptian soldier him-  
 self is far from any real fighting abil-  
 ity. In this respect, it is interesting to  
 note the continuous complaints of the  
 Egyptians (and also of our other ene-  
 mies) concerning the nocturnal battles  
 and raids of the Jewish soldiers which  
 confuse and terrorize the enemy for-  
 ces.

There are several reasons for the  
 lack of fighting capacity in the Egyp-  
 tian soldier. Among them are: phys-  
 ical weakness. According to official  
 Egyptian statistics over 90 percent of  
 the people suffer from the diseases  
 Egypt is infested with; malnutrition  
 in Egypt is rather the rule than the  
 exception. In evaluating the Egyptian  
 army one should not ignore the purely  
 social angle—the unfriendly relations  
 existing between the privates and their  
 commanders, mostly members of the  
 upper classes who are accustomed to  
 exploiting the people and reducing  
 them to a state of serfdom. Above  
 everything else, however, the fact that  
 they do not know what they are fight-  
 ing for is of extreme importance. For  
 what purpose, indeed, are the enslaved,  
 starving, naked, oppressed Egyptian  
 masses fighting in the Negev? Do the  
 Egyptians lack desert territory? Is the  
 desert of Sinai too small for them?  
 And what of their western desert? If  
 it is their idea to settle the surplus of  
 the Egyptian population, which is  
 multiplying and overflowing the nar-  
 row, though fertile valley of the Nile,  
 there is enough unsettled territory in  
 the south, in Sudan, which is eminent-  
 ly suited to agriculture, to cattle  
 breeding and cotton growing.

An Egyptian commander who was  
 taken captive by the Israeli forces de-  
 fined his attitude to the war with  
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trations and similes, he drew two circles. On one of them he wrote "Palestine" and on the other "Egypt." Here—said the Egyptian officer, pointing to the circle marked "Palestine"—I am not prepared to fight and to spill my blood, but here—he emphasized, pointing to the circle marked "Egypt"—I am ready to give my last drop of blood, unto death. Thus, he exemplified the attitude of the Egyptian people toward the Palestinian adventure undertaken by its government.

Why, then, did the Egyptian government undertake the burden of the war against Israel? No one aware of the facts supposes that the Egyptian government made its decision on May 15th with any great rejoicing. Generally speaking, Nokrashi Pasha has been known as a cautious and sober statesman, rather than one who tends to get involved in political matters which are not rightly within his province. Although there were a number of factors impelling his government into the stupid and wicked act of declaring war upon Israel, it may be assumed that Nokrashi Pasha himself has already repented of it. Among the above-mentioned factors are: a) pressure by the extreme Moslem and Fascist groups like "Young Egypt" and the "Moslem Brotherhood," which is not an insignificant political and social factor in Egypt; b) the desire to maintain the Egyptian hegemony within the Arab League. If Egypt had refused to join the invaders, her position within the League would have deteriorated and the control of the League would have inevitably passed into the hands of the Hashemites, represented by Iraq and Transjordan; c) the confidence prevailing in the Arab capitals, to the effect that within a few days or, at the most, a few weeks, the Arabs, with the help of Great Britain, would achieve a decisive victory over Israel and Arab flags would fly over Tel-Aviv (this was one of the most seductive slogans); d) the desire to suck a territorial bone in conquering a country that seemed to be in one's pocket and, in particular, to avoid the expansion of Transjordan toward the south, and, at the same time, to satisfy the ambitions of the court which aimed at duplicating the triumphs of Muhamed Ali and Ibrahim Pasha, founders of the present Egyptian dynasty; e) fear of the establishment of the state of Israel on the borders of Egypt, a fear that persists today, and perhaps more strongly than in the past. There is no doubt that the poisonous propaganda disseminated over a period of years by

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the Mufti and other Arab propagandists concerning plans of Zionist domination over the Arab countries was absorbed by some of the Arab politicians, including those who are now at the head of the Egyptian government.

All these factors together impelled the Egyptian government into the war. However, the winds did not blow in the desired direction, and the ships, in the words of the Arab proverb, were scattered far from the longed-for shore and driven into into the jaws of a sand bank. Now Egypt, together with her allies, is trying with all her might, though secretly, to detach its boats from the Israeli sand-bank.

It is widely known that the expenses of the war constitute a heavy burden on the government. Even though the Egyptian soldier is required and is "able" to subsist on a piece of unleavened bread, a little cheese and olives *etc.* like his brother in the Egyptian village these expenses for food and supplies end by amounting to large sums. It is clear that the more Israel increases in strength, the more will Egypt be compelled to mobilize larger forces for the battle front. All this costs money. However, the financial problem is, for the time being, not as serious in the case of Egypt as it is in the case of Iraq whose treasury is losing, in addition to the usual costs of war, millions of dollars as a result of its refusal to allow the flow of her oil through Haifa. The financial burden weighs more heavily on poverty-stricken Iraq, with its population of four million, than on Egypt, relatively rich, with a much larger population. There are signs, however, that Egypt, too, has begun to feel the excessive financial pressure. Apart from this, no wall of lies, however, tall and thick, can obscure the fact of military defeat. Some time ago a great deal of protest was heard among the upper-class Egyptian families against the mobilization of officers, owing to rumors concerning the rate of casualties among the officer-class. As a result of this protest, the government was forced to calm the families in question, on which it depends in a number of important ways, by means of a formal announcement to the effect that only an inconsiderable number of officers had fallen in the Palestine war.

On the basis of cold logic it would seem reasonable to suppose that the Egyptians, having learned their lesson, would attempt to find a way out of the Palestinian tangle. It may be

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worth remarking that the real significance of the "Palestinian Government" established at Gaza was the desire of the Egyptians (and of the other Arab states) to pass the Palestinian "headache" back to the local leaders themselves, such as the Mufti, Jamal al Hussein, Akhmed Khilmi, Dr. Khalidi and all the other members of the Mufti's coterie. The old king of Amman is still protesting that no Palestinian Arab government should be set up so long as poor Palestine remains unpurified of Zionists. Nevertheless, anyone who can interpret Abdullah's language will understand this to mean: You and your supporters are in favor of establishing a Palestinian government of the Husseinis at Gaza in order to frustrate my last hopes for a Greater Syria. I shall never consent to this so long as I can stand against you alone.

The "Gaza Government" was indeed calculated to act as a barrier to the expansionist aspirations of Transjordan, but beyond this it was planned as a face-saving device for disposing of the burden of the war against Israel. If ultimate defeat is fated, it's "wise" to shift the responsibility for the coming calamity to local Arab forces.

(*Davar.*)—MENAHEM KOPELIUK

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